



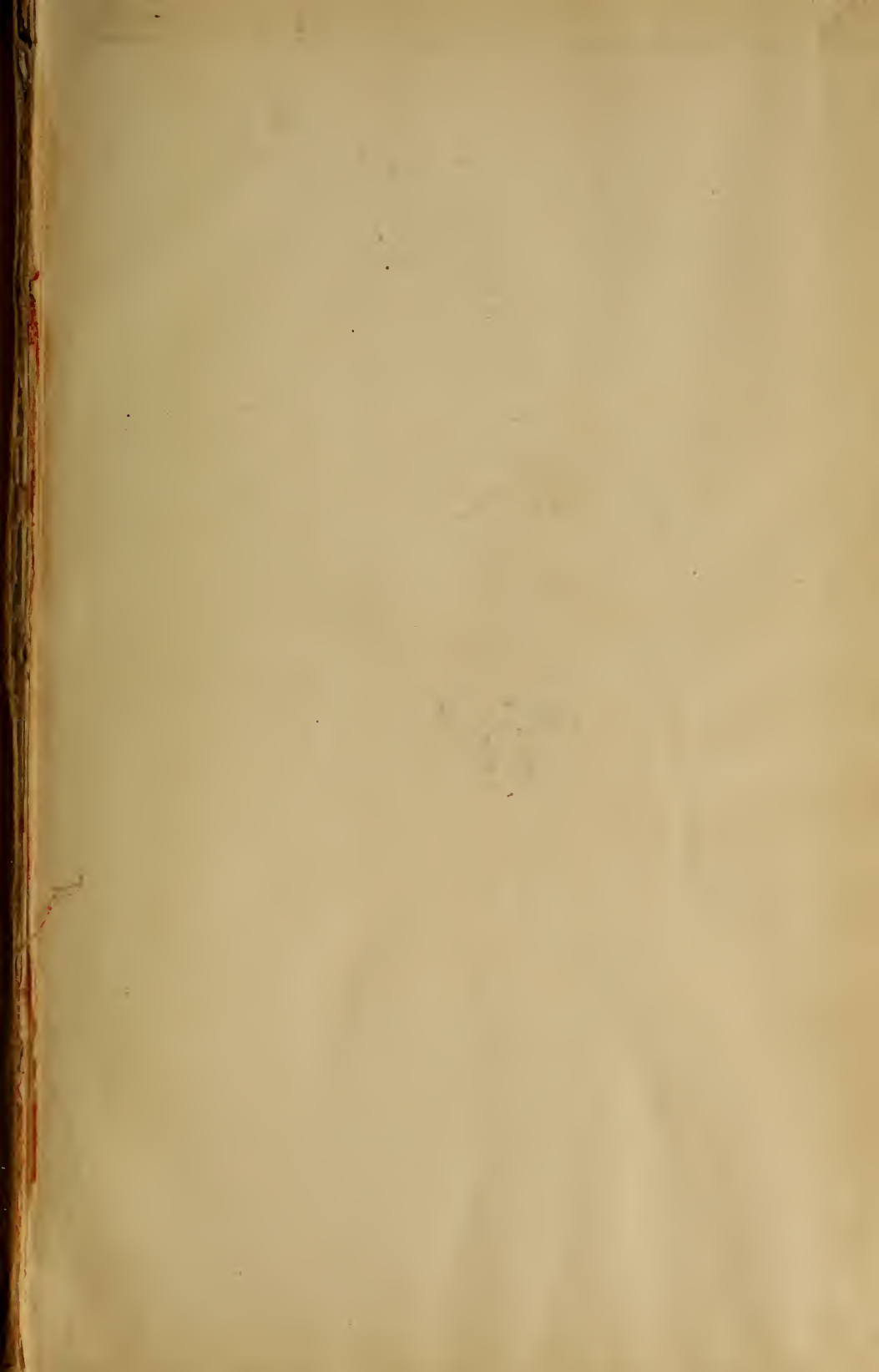


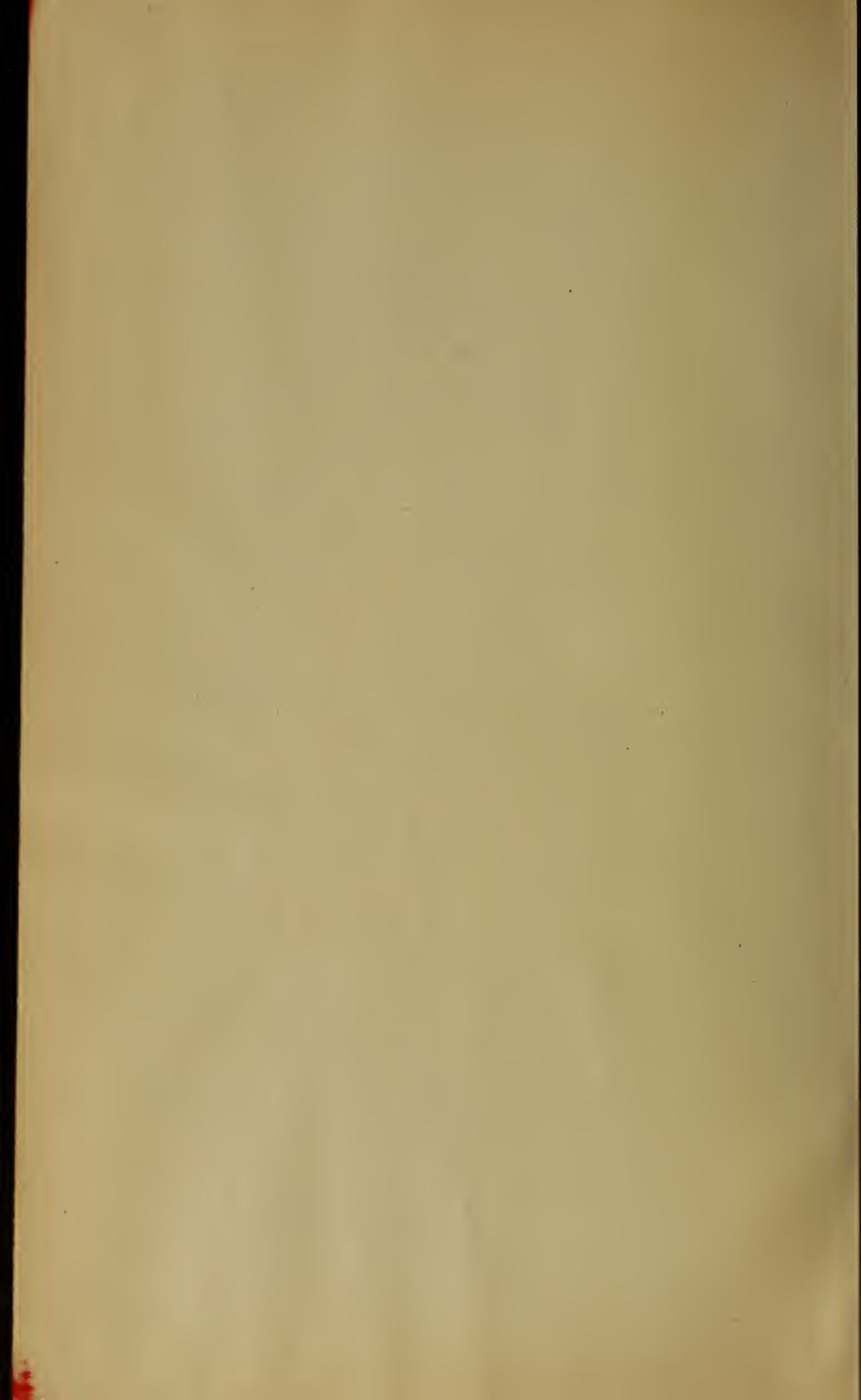
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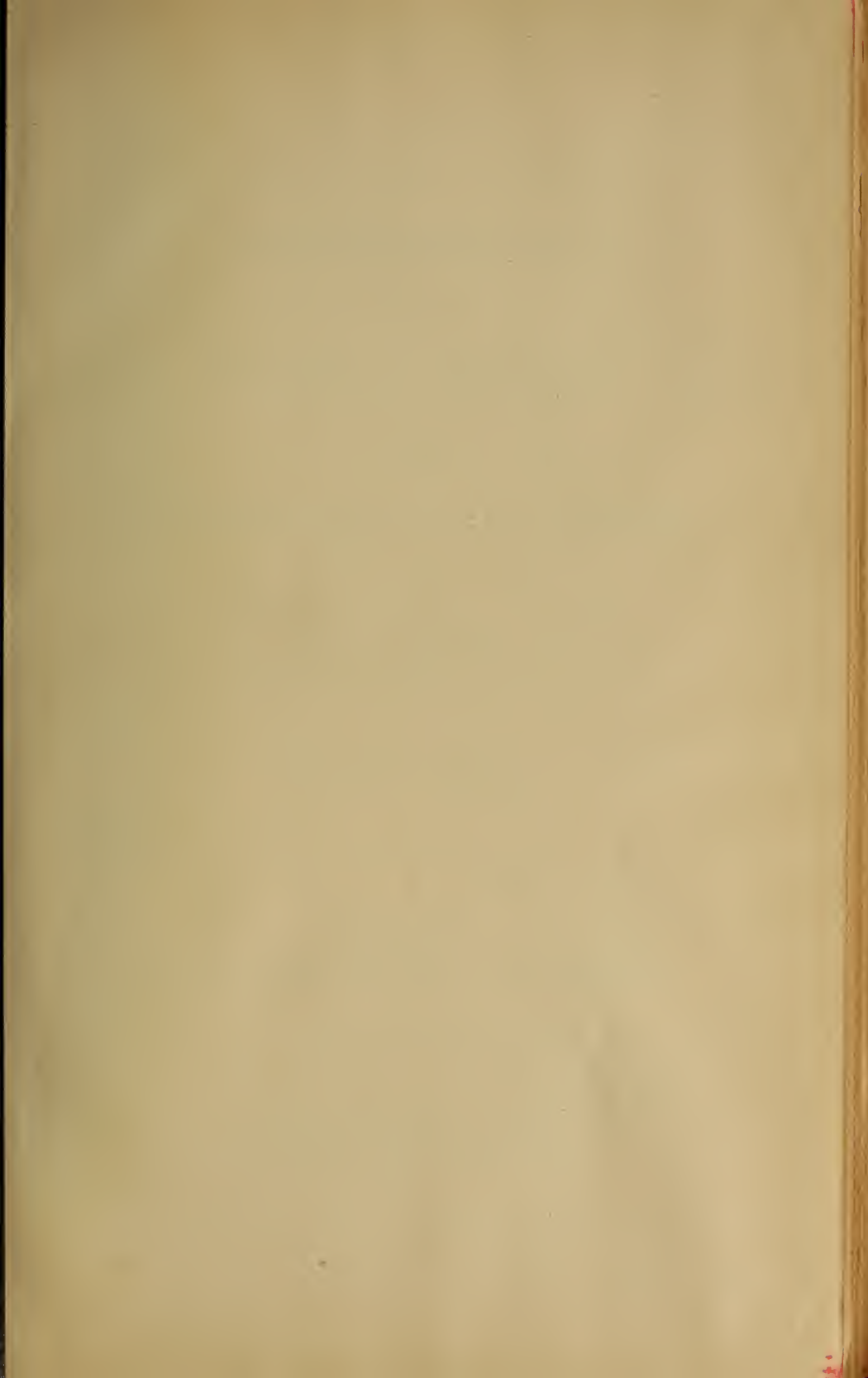
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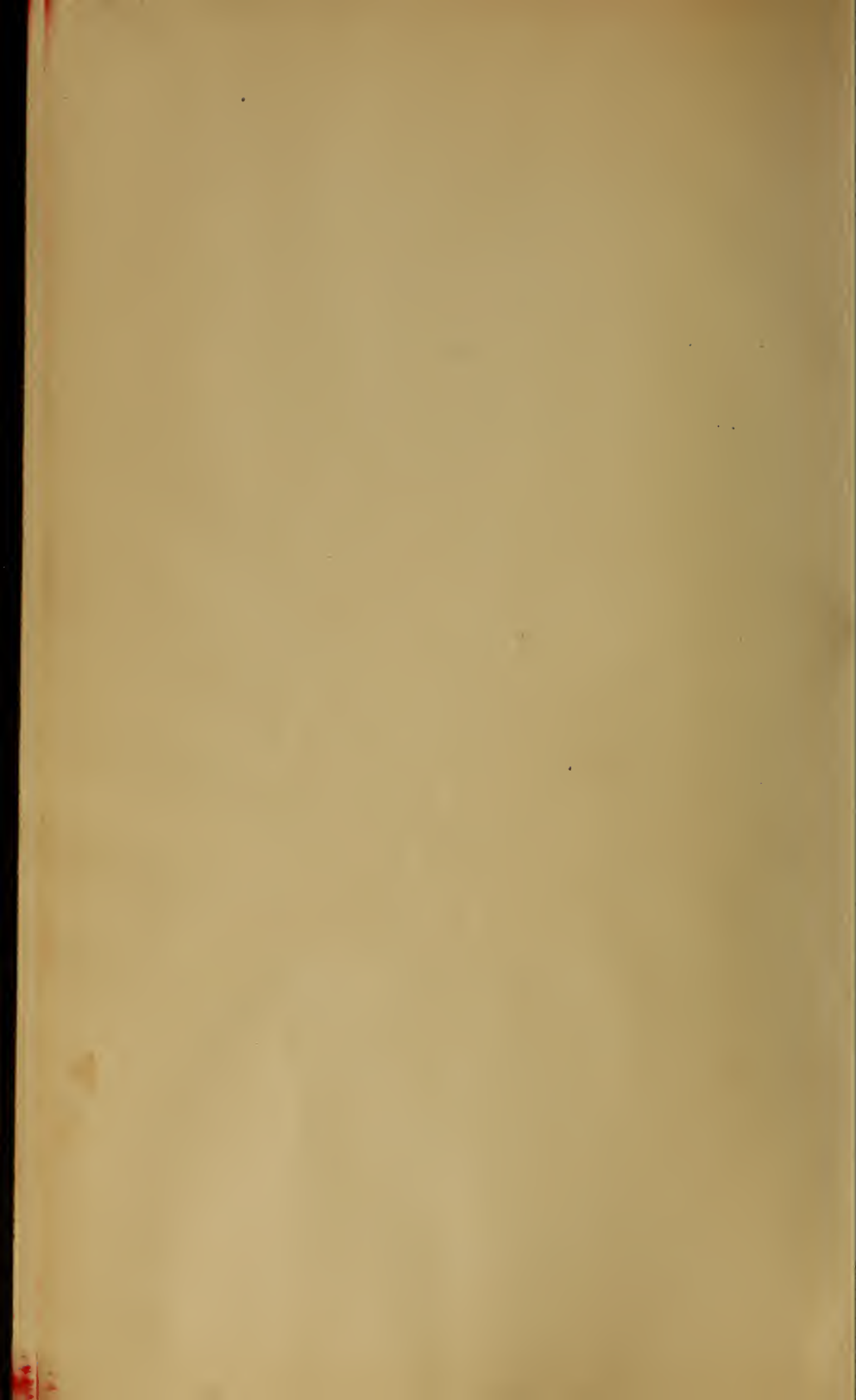
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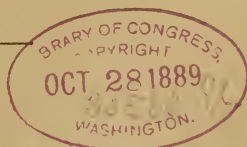
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By JOHN J. LALOR.

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BUCHANAN'S ELECTION—END OF 35TH CONGRESS.

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# BUCHANAN'S ELECTION

TO THE

## END OF THE 35TH CONGRESS.

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### CHAPTER I.

#### THE DRED SCOTT DECISION.

“When the mariner has been tossed for many days in thick weather, and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance of the sun, to take his latitude, and ascertain how far the elements have driven him from his true course.”<sup>1</sup>

The stream of evolving circumstances shot with so much force and in such wild eddies towards the steep precipice and down into the dark depths of time, that the memory of the great men of the second period of the history of the Union, under the constitution, faded away with a rapidity surprising even in the fast-living American people. These words, however, with which Webster began his celebrated speech of January 26, 1830, in reply to Hayne, were not yet forgotten. But if they had found a place only in the reading-books used in the schools, among the specimens of American eloquence, they would have been of little value. They contained

<sup>1</sup>Webst.'s Works, III, p. 270.

an earnest admonition, the taking of which to heart was never so urgently demanded as after the presidential election of 1856. To prevent the catastrophe was impossible, for the will and the wishes of men were powerless against the logic of facts. But the time and form of its coming, the rapidity of its course and its final result depended, in great part, on the voluntary determination of the people as to what they would do or leave undone, and their determination would be more fatal in proportion as they mistook the real situation.

In this respect, the greatest responsibility rested on the president. The constitution had placed him on the highest watch-tower commanding the farthest and most unobstructed view. The express provision of the constitution that he should, from time to time, give information to congress of the state of the Union, imposed on him the sacred duty to endeavor, with the most scrupulous conscientiousness, not to allow his vision to be dimmed by party passion and party interest. He had, indeed, been elected by one party, but he was bound by his oath to support the constitution, which said nothing of a democratic or republican president, and mentioned only a president of the United States. True, even Washington had found it impossible, when invested with the executive power, to keep entirely aloof from, and above, party, and the failure of his endeavor was determined by the very nature of things. It could not but be still more impossible, if we may be allowed the expression, for his successors in the presidency to lift themselves, in thought and action, above party; and even if they could so have raised themselves, they should not have been asked to do it, for the constitution was not guilty of the absurdity of making the absence of convictions a qualification of a true president; besides, it was as the representatives of

certain political convictions that they had been chosen presidents. But the correct principle that the personal convictions of the president which coincide more or less fully with the convictions of a certain definite, political party must control his judgment and action, should not be perverted into this, that the president ought to, or even must, base his judgment and action on what the doctrines of his party demand of him, or on what would be of advantage or disadvantage to his party. But this is precisely what Pierce again did with the naïve audacity of absolute shamelessness.

The annual message of December 2, 1856, so far as it touched on the internal affairs of the Union, did not rise above the level of a stump speech by a professional party agitator of the most ordinary type. Such a harangue *post festum*, coming from any mouth, would seem very empty, even to the most short-sighted criticism; coming from the mouth of the president, it made an impression all the worse, as Pierce introduced it with a reference to his duty "to scan with an impartial eye the interests of the whole."

If the message was generally judged much more indulgently than it deserved, the reason is that no importance was attached to it, and rightly so; and, further, because people saw in it a plea for a defendant delivered from the bench, and in the tone of the judge. The republicans did not now do Pierce the honor of allowing themselves to be again aroused, by his bold distortion of the facts, to a still stronger expression of their moral indignation. Their sentence on him had been long since irrevocably passed; and, whether that sentence was well founded or not, it would have been useless for them to go back to the record of his trial, since it was an indisputable fact that he was politically dead. When he said

that the states in which the republicans were victorious had tried "to usurp" the government, all he accomplished was to awaken doubts as to his political responsibility. Whatever absurdities he might give utterance to, he thereby, in no way, changed the facts; but the more he indulged in exaggerations, evident untruths and pure nonsense, the less could he succeed in deceiving the thinking portion of the people as to the facts. The assertion that those alleged usurpatory wishes had been "pointedly rebuked" by the people did not transform the minority vote for Buchanan into a majority vote, and did not make people forget the honest admission of the radicals of the southern states, that the democrats owed even their plurality victory only to the Fillmoreans. Even if Kansas now enjoyed completely undisturbed peace, as Pierce assured the country it did, would the correctness and justice of his Kansas policy be recognized, on that account, by the republicans, and would the Kansas question cease to be the order of the day? One of the most influential democratic papers of the country, the *Detroit Free Press*, explained to him that Pennsylvania, New Jersey, Indiana, Illinois, Delaware, Kentucky, Tennessee, Missouri and Louisiana "could not have been saved" for the democratic party if he had been its candidate, or his Kansas policy the decisive question, in the electoral campaign.<sup>1</sup>

Did Caleb Cushing's bold assertion, that the entire country covered by the territories had already been surrendered to slavery by a series of decisions of the federal supreme court, become a fact because it was now repeated by the president? All these decisions had been published

<sup>1</sup> The ultimate cause of his fatal mistake the article finds in his "overweening desire of a second term." *Congr. Globe*, 3rd Sess., 34th Congr., p. 14.

long before the electoral campaign, and yet the territorial question was the pivotal point in that campaign.

Pierce, in the name of his party, hiding behind the mask of the triumpher whose victory has been sufficiently complete to warrant him henceforth to hang his sword and shield on the wall with impunity, cut now only a half-comical, half-pitiful figure. No previous president, not even Tyler, had so entirely thrown away his moral reputation and his reputation for statesmanship as had he; and the short interval between the election and inauguration of the new president bore, in a higher degree than ever before, the character of an interregnum. Even if Pierce in the composition of it had been animated with the sincerity of Washington, his message could have no practical weight except to the extent that he succeeded in imparting his own delusions to the political parties of the country.

It was not so easy, as might have been expected, to give a definite answer to the question whether, and to what extent, this was the case. Congress devoted a great part of the session to exhaustive debates on the history and meaning of the electoral campaign. Most of the speeches, however, were delivered in a comparatively very calm tone, and the speakers kept to the subject. The southerners based their arguments much less than usual on threats and coarse slander of the republicans, and the republicans made no effort to find compensation for their defeat in angry declamation. Neither side retreated from any position it had previously taken, while both showed a certain reluctance to advance in the way of attack or defense. It was plain that this could not be ascribed solely to the natural want of rest, after the long and violent struggle. The two parties were weighed down by a certain feeling of insecurity. The outlook into the near

future was still so involved in obscurity that there was great hesitation on both sides to take the initiative.

If the small majority of the secessionists on principle, in the democratic camp, had continued the agitation in favor of their programme immediately after the new democratic victory, as openly and directly as they had shortly before and during the electoral campaign, they would, by so doing, have only sapped the foundation under their own feet. Every democrat who honestly desired the preservation of the Union, and who believed that its preservation depended on the supremacy of his party, could not but anxiously ask himself, when he thought of the next step to be taken, whether that step would not make the complete disruption of the party unavoidable. There were not many lulled by the result of the election into such unreflecting optimism as to consider a further straining of party bonds devoid of danger. But how could any advance be made without making such a straining necessary? And advance the party must; for with the exception of the question whether the democrats should continue to rule, the electoral campaign had decided nothing whatever. The more prudent democrats, who recoiled before a catastrophe, would, therefore, have liked nothing better than to see the taking of the initiative shoved on to the shoulders of the republicans, and the latter thus justify the charge made by Pierce, that they were pursuing an aggressive policy towards the south. But the republicans were neither so short-sighted nor so fanatical as to now adopt the *modus operandi* of the abolitionists and carry it into actual political party life. Admitted it must be that, by doing so, they would have exhibited their fidelity to principle and their love of freedom in a brilliant light; but such action would have been so grave a tactical blunder that, in all probability,

its consequence would have been the loss of their viability as a political party. They were honestly convinced that they were a strictly conservative party, and the people had flocked around their banner only because they were believed to be such a party. The moment they went beyond acting on the defensive they would lose that character, and the masses then would, without question, desert them as rapidly as they had fallen into rank with them. True, ethico-religious convictions were, to a great extent, the motive power that built up the republican party; but only because it was thought that they were in complete harmony with the requirements of positive law did the people believe they might join them. Of course, the possibility that the party, by new provocations, might be forced to make ethico-religious convictions and political necessity, viewed from the standpoint of these convictions, govern in the construction of positive law, could not even now be denied. Still less could it be denied there was danger that the masses would be again inclined to rest satisfied with the condemnation of slavery "in the abstract," if they were not kept awake and eager for the fray by new provocations. This danger was so great and so plain that the leaders must have been struck with complete blindness not to recognize that they could not play more effectually into the hands of the slavocracy than by seeking to change the programme with which they had begun their existence, by making it aggressive.

That party politics — with the exception of the speeches of a more academic character referred to — were very quiet in the winter months of 1856-57, was, under the circumstances, very natural. Evidently, however, no conclusion as to the future could be drawn from this comparative calm. The programme of the Fillmoreans: conveniently and safely to get out of the way of all

danger, simply by the preservation of the *status quo*, was still merely the declaration of bankruptcy of the fossil wisdom of political mediocrity — its declaration of bankruptcy skilfully formulated. The question was not whether the struggle would begin anew, but only how, and from what side, the impulse to its outbreak would come.

So far as the latter point is concerned the decision lay entirely with the republicans, to the extent that an opposition party is never compelled to pursue a positive policy. They needed only to wait for the end of this session, and of Pierce's presidential term, when the democrats would have to take the initiative. The latter had only a choice as to whether that initiative would be taken by congress or by the new president. If the latter wished to take it he could not be prevented, since, in his inaugural address, he had the first word. It required very great ambition and a vast amount of self-reliance to want, in this instance, to assume the dreadful responsibility of the decision. But the peculiar circumstances of the case transferred that responsibility to the president in such a way that he could not permanently escape it, no matter how ardently he might wish to do so. As the next step forward would necessarily broaden and deepen the split in the democratic party, it was useless for the president to submit everything to the "wisdom of congress." Even if it had been possible for him to remain absolutely passive, so long as congress had reached no firm resolve in the form of laws, the factions of his own party could allow him to hold no such neutral position, because none of them was strong enough to overcome the adversaries in its own camp, the republicans and the Fillmoreans. It seemed very doubtful if even the decided partisanship of the president would have weight enough

to unite a sufficient majority on any programme; but without the employment of all the pressure which the executive was able to exercise by the division of the spoils and other means, any effort in this direction would certainly have had no prospect of success.

Verily, therefore, the president found himself in no enviable position. But from one special circumstance there arose, for Buchanan, difficulties, or at least unpleasantness, of a peculiar kind, from which no other prominent party politician, in his position, would have had to suffer to the same extent. At Cincinnati and in the presidential campaign it had been of great advantage to him that, during the controversy over the Kansas-Nebraska bill, he had been out of the country; but now, the very same reason made his position, in relation to his own party, more difficult and delicate. If the fact that no one could positively say where he stood had rendered him the best of service up to the time of his victory, he had all the less reason, on that account, to expect indulgent treatment from the faction against whom he would declare, after the battle had been won. If he wished to sit between the two stools his fall would certainly be all the worse, because an energetic effort would be made, on both sides, to keep him from doing so. And if he made a choice, the other side, embittered, would, unquestionably, declare itself shamefully cheated; and the more uncertain it was where he had stood on the issues of the last three years, the less was he in a condition to refute the charges of disloyalty and treason.

Under these circumstances, imagine what thoughts and feelings must have been awakened in Buchanan's breast by the news that the legislature of his own state, although the democrats were in a majority, small, indeed, but undisputed, in that body, had, on the 13th of January,

1857, elected the republican Simon Cameron to be a senator of the United States. What importance was to be attached to this defeat depended, of course, on its special causes. But it could not fail to make a powerful impression on friend and foe,<sup>1</sup> and this fact alone made it an event of importance. Pennsylvania was not only Buchanan's own state, but the Cincinnati convention had chosen him as presidential candidate mainly because he had been the most prominent and the best-liked politician of Pennsylvania, and Pennsylvania, as a matter of fact, had turned the scales in his favor in the electoral campaign. And now he received this slap, even before he had taken possession of the White House. It was even sought to account for it by the fact that he had tried to obtain votes for one of the democratic candidates.<sup>2</sup> And all the more weight was attached to it, because the greatest amount of credit for the victory of the democrats in Pennsylvania was ascribed to Colonel Forney.

The republicans here and there inferred the immediate end of democratic rule in Pennsylvania from this unexpected incident; yet such an inference might easily prove to be an over-hasty conclusion. But that that rule would be greatly weakened, and that, in a short time, perhaps, a very small weight would suffice permanently to turn the scales, even the democrats could not conceal from themselves. Still what conclusions the party leaders, and especially Buchanan, would draw from the rec-

<sup>1</sup> A correspondent of the New York *Tribune* wrote from Washington to that paper on the 13th of January: "A single event has rarely produced greater sensation in political circles here than the intelligence of Mr. Cameron's election did to-day." The N. Y. *Tribune*, Jan. 16, 1857.

<sup>2</sup> See his letter, in relation hereto, of January 7, 1857, to Henry S. Mott, in the New York *Tribune* of February 3, 1857.

ognition of this possibility, was an entirely different question. If the southern wing looked upon the event as a warning to take into account, as far as possible, at least for the moment, the pressure under which the party politicians in the northern states were kept by public opinion, in order that they might gain a stronger foothold in the doubtful states, Buchanan would have gladly lent them a friendly hand to help them to a cautious policy of reconciliation. But how if the slavocracy drew the contrary conclusion from the event, viz.: that all consideration on their part was love's labors lost, and that the iron must be forged with blows of redoubled weight?

On the 7th of February, the *New York Tribune* was written to from Harrisburg that, in all probability, Colonel Forney would not be called to the cabinet, because the south did not want the real views of Pennsylvania, whose vote had been sneakingly obtained only by the promise that Buchanan's election would insure the freedom of Kansas, represented in it; in October, therefore, that is, at the next election, violent storms might be expected from Pennsylvania.<sup>1</sup> Three days before, the same journal had been informed, from Washington, that Buchanan had conferred with some prominent southerners like Hunter and Mason, but that of the present cabinet officers, only Jefferson Davis had been honored with an invitation. The subject of discussion was not the composition of the new cabinet. Buchanan had communicated to the gentlemen present his views respecting his inaugural address, and received a promise from Davis to support the administration so long as it held to the programme contemplated.<sup>2</sup> That this intelligence deserved,

<sup>1</sup> The N. Y. *Tribune*, Feb. 11, 1857.

<sup>2</sup> *Ibid.*, 9th and 10th of February.

as the correspondent wrote, attention as an indication of the future, could no longer be doubted, when the *Tribune*, on the 12th of January, was telegraphed from Washington that Buchanan had said Rusk was dead with the republican party. Even if the thought had not been expressed thus strongly, but had been merely intimated, the despatch, that more clear-sighted democrats began anxiously to ask themselves what the party had to expect from the president, had to be believed.<sup>1</sup> But not only the democratic party but the entire country had every reason to be anxious, when, under a cloud so pregnant with the storm, a fog thus dense obscured the vision of the old man in whose hands the helm of the ship of state was to be placed during the next four years.

The pomp displayed at the festivities of the inauguration exceeded what was usual on such occasions. A mild, clear, spring day put the population of Washington and the guests who had flocked thither in great numbers in the best of humor. Buchanan tried not to dampen their spirits. Those who honored him as the "sage of Wheatland" were able to come down Capitol Hill, after listening to the inaugural address, gladder than when they had ascended it.

The president began with the assurance that, in his administration, he would be governed by no motive except the wish to serve his country faithfully and well, and to live in the grateful memory of the people, as he was resolved not to seek re-election.

Why might not a happy future be looked forward to, considering such excellent intentions? The president

<sup>1</sup> " . . . the latter (Rusk), with others, argued that if such delusion could be entertained, others more serious might easily occur. There seems to be a foreboding on the democratic side that the administration is doomed, under a fatality of the president."

had said, indeed, in the electoral campaign, that the "passions" of the people had been excited "to the highest degree," because that campaign turned upon questions of "vital importance;" but he had claimed also that the "tempest at once subsided and all was calm," when the people had made known their will. What ground was there to consider this calm a sign that the storm was gathering strength for a new outbreak with redoubled violence? Was there not rather every reason to hope that the agitation of the slavery question would cease, and that sectional or geographical parties, so much dreaded by Washington, would disappear? Since congress had evolved the "happy conception" to apply to the question of slavery in the territories the simple principle that the will of the majority must decide, the "agitation" was "without any legitimate object."

If the hope that the long and violent struggle between slavery and freedom had been terminated by the electoral campaign was based only on this, it evidently did not deserve to be likened even to a soap-bubble. That "happy conception" of congress had already become a law in the Kansas-Nebraska bill, in 1854. But it was this very bill that led to the formation of the republican party; and on that very ground the last electoral battle had been fought with the high degree of passion alluded to by the president. Thus far, therefore, the people had certainly not believed that "the recent legislation of congress" had deprived the agitation of every "legitimate object." Hence the suspicion could not but be awakened that the alleged hope that the tomahawk would now be buried, was a conscious sham; for Buchanan must have become a victim of megalomania to think that his *ipse dixit* would convert the people to his belief. Or

might there not be, after all, some other positive foundation for this fair hope discovered?

Much as Buchanan might admire the "great principle" of the Kansas-Nebraska bill, he could not help admitting that it had not furnished, immediately, a complete solution to the question at issue. Will or not, he had to remember that the partisans of that bill held very divergent opinions on the question, when the decision by the majority was to be made. He explained that he had always understood the bill to mean that it was to be made when the population of the territory had grown so large that they could give themselves a constitution in order to be admitted into the Union. The practical importance of the question, however, he considered very small.

Scarcely a moment before he had said that, in the electoral campaign, a "question of vital importance" was at issue. But nothing whatever had been changed by the presidential election, or since it. The republicans had performed no evolution, and the democrats were as much at variance as ever in their interpretation of the "great principle." Notwithstanding this, the controversy had shrunk, Buchanan claimed, to a question "of but little practical importance," so that the president now thought himself warranted to tell public opinion that it might turn its attention to questions of "more pressing and practical importance." This was sheer nonsense unless reason were introduced into the evident contradiction, by the sentence immediately following the assertion, that the question in controversy, when the principle of "popular sovereignty" in respect to slavery should come into force, was practically of little importance. "Besides," that sentence reads, "it is a judicial question

which rightly belongs to the supreme court of the United States, before whom it is now pending, and will, it is understood, be speedily and finally settled."

If this announcement were correct some meaning might be made out of the nonsensical reasoning of the president, but a meaning very different from that which the president himself intended.

What reason was there for the express assurance that he, "in common with all good citizens," would "cheerfully" submit to the decision soon to be expected?<sup>1</sup> If it were certain that the decision lay with the supreme court of the United States, how could it be doubted that all citizens would submit to its judgment, even if not "cheerfully?" Was there not, in the allusion to the "good citizens," an expression of the anticipation that the jurisdiction of the supreme court would be contested? Bad as those citizens might be who would not submit to its decision, with respect to the practical importance of the question on which the president had laid the greatest stress, it was evident that only their number was of any influence. It was not individuals only, but the great political parties, whose creed hitherto came in conflict with the decision of the supreme court. It was not individuals only, but the great political parties, who denied its jurisdiction, and who, therefore, claimed that its judgment was not binding. Hence its decision, as a matter of fact, could not be final. In the very nature of things, the battle must be renewed with increased bitterness on both sides,

<sup>1</sup> James Buchanan Henry, nephew of the president, says that the inaugural address was composed at Wheatland, and that Buchanan added to it, afterwards, only the portion relating to the Dred Scott decision. Curtis, *Life of James Buchanan*, II, p. 187. Nicolay and Hay, in their history of Lincoln, add, this "leads to the inference that it was prompted from high quarters." *The Century Magazine*, June, 1887, p. 215.

because the vain effort had been made to settle the controversy in this manner.

The supreme court of the United States must have had the same opinion of its competency as Buchanan had, if the expectation of the latter was to be fulfilled that the court would render an opinion containing a decision respecting the *principle*, and which, on that account, could claim to be a final settlement of the controversy. But from Buchanan's own reasoning it followed that, in this case, his good and bad citizens would undoubtedly coincide, respectively, with the two political parties. The characterization of the "principle" of the Kansas-Nebraska bill as a "happy conception" evidently contained a recognition of the unquestionable fact that, together with it, something new was introduced into the legislation of the Union. More than this, the expression was very unhappily chosen, if this new thing, thus introduced into the country's legislation, was to be declared an absolute postulate of the constitution,—a postulate only just now discovered. But if the application of the principle of "popular sovereignty" was not required by the constitution, but only recommendable on grounds of equity or political expediency, it must, to say the least, have appeared very surprising, at the first glance, that, so far as the time at which it came into force was concerned, the question of equity and political expediency should be transformed into a pure question of law under the constitution, which was to be decided by the supreme court of the United States. A metamorphosis thus wonderful could not be *understood*; the most that can be said of it is that it might be *taken on faith*. But the Union had now lived more than two generations under the constitution. Several territories had been organized and admitted into the Union as states during that period.

On the occasion of their admission, the slavery question had repeatedly given rise to the most violent party struggles, but they had been fought on different ground and settled in a different way. The doctrines now represented by the president were an achievement of recent years, and they had furnished a basis for the transformation and for a new formation of parties. If the announced judgment of the federal supreme court bore the character described, then the two parties to the case before that court were the two great political parties of the country; and in the constitutional creed of the republican party since its origin, two chief articles were the two principles: Congress alone has jurisdiction over the slavery question in the territories; and the doctrine of popular sovereignty, whose unconditional rejection is demanded by every political, economic, practical and moral consideration, is destitute of all constitutional foundation. It was, accordingly, a notorious fact that the republicans emphatically denied the jurisdiction of the United States supreme court on the *general* question, and, as they further considered the doctrine of popular sovereignty worthy of condemnation from every point of view, they could not, evidently, in the face of all the requirements of logic, *believe*, notwithstanding, that the *special* question was, as Buchanan asserted, a "judicial" one under the constitution. If, spite of this, Buchanan really expected that a judgment of the supreme court would practically be a settlement of the controversy, then he could not but believe that the republicans, for some reason or other, surrendering their constitutional, political, economic and moral convictions, would accept the supreme court as an extra-constitutional arbitration court to whose sentence they would voluntarily submit. If this could be at all supposed, an absolute condition

precedent thereto was unquestionably this: that the republicans should hold the slightest suspicion of the partiality of the supreme court to be excluded. But they had already long branded the supreme court as the "citadel" of slavery, and the history of its development, with which even the educated strata of the people were exceedingly little acquainted, was suggestive of the thought that the south had, systematically and conscious of its aim, labored for decades to make it such in very deed.

The law of September 24, 1789, on the organization of the judiciary system of the Union, provided that a chief justice and five associate justices should constitute the supreme court of the United States, established by the constitution, and divided the Union into thirteen districts,<sup>1</sup> which were to be comprised in three circuits,—an eastern, a middle and a western circuit,—an appeal lying to them from the district courts.<sup>2</sup> A law of April 20, 1802, raised the number of the circuits to six, and the north and the south were given three each. Maine and the states of Kentucky and Tennessee continued to constitute separate and exclusive districts, but were not included in any of the circuits.<sup>3</sup> Neither was any consideration shown to Ohio, although it was admitted on the following day into the Union. Not until 1807, by a law of February 24 of that year, were Kentucky, Tennessee and Ohio formed into a seventh circuit, and, ac-

<sup>1</sup> The fundamental idea was to make each state a separate district. North Carolina and Rhode Island, however, could not be taken into consideration, as they had not yet ratified the constitution. On the other hand, Kentucky and Maine were even now formed into districts, although they still were parts of Virginia and Massachusetts respectively, and although Maine was admitted into the Union only thirty years afterwards (March 3, 1820).

<sup>2</sup> U. S. Stat. at L., I, p. 73.

<sup>3</sup> Ibid., II, p. 157.

cordingly, a seventh associate justice was added to the supreme court of the United States.<sup>1</sup>

So far there was nothing to be observed of any influence of the slave-holding interest on the organization of the judiciary system. On the occasion of the next important law, however, an attempt to influence it was clearly perceptible. The storms of the Missouri struggle and of the nullification experiment by South Carolina had swept over the country. The abolitionists, under the war-standard of the unbending and inviolable principle, had entered on the scene, and the slavocracy had opened their eyes to the fact that the condition precedent to the continuance of slavery was its supremacy over the Union. Of how great importance, therefore, a preponderant position in the supreme court of the United States was, could not escape the keen eyes of the leaders,<sup>2</sup> and the little interest public opinion had in questions relating to the organization of a judiciary as well as the little understanding it had of them, made the realization of their wishes in that direction easy. By the law of March 3, 1837, the number of associate justices of the supreme

<sup>1</sup> U. S. Stat. at L., II, pp. 420, 421.

<sup>2</sup> Whether authoritative proof can be produced for J. M. Ashley's assertion that Calhoun was the father of the idea, I do not know; that the assumption seems probable to me I need not say, in view of my opinion on the towering position of Calhoun among all the leaders of the slavocracy. The passage in Ashley's speech of May 29, 1860, from which the facts adduced in the text are chiefly taken, is as follows: "Failing, however, to secure the open indorsement by the democratic party of that day of the favorite theory of the slave power, Mr. Calhoun hit upon the plan of getting possession of the supreme court, because it is a power the furthest removed from the people, is held in great esteem by them, and such acts of aggression as Mr. Calhoun contemplated, if committed by the supreme court, he knew would be so quietly done as to excite no alarm and pass almost unnoticed." Congr. Globe, I Sess. 36th Congr., App., p. 366.

court was increased to eight, and that of the circuit courts to nine. Kentucky and Tennessee were separated from Ohio, which henceforth, together with Indiana, Illinois and Michigan, constituted the seventh circuit. The two new circuits were made up of Kentucky, Tennessee and Missouri; and of Alabama, Louisiana, Mississippi and Arkansas, respectively.<sup>1</sup> The free states, with a population (according to the census of 1840) of 9,654,865, had, therefore, four circuit courts, while the slave states, with a white population of only 4,573,930, had five. In consequence of the rapid increase of population in the free states, this unequal apportionment became more inequitable and more unreasonable as years rolled by. It at last came to such a pass that the judge of the seventh circuit had more to do than the five judges of the southern circuits together,<sup>2</sup> while the new, free states admitted into the Union were allowed no representation in the supreme court of the United States, and were neither assigned a place in the existing circuits nor constituted circuits themselves, although the amount of judicial business in them in 1860, of which such courts would have

<sup>1</sup> Stat. at L., III, pp. 176, 177.

<sup>2</sup> Ashley drew up the following table:

	Whole number of cases on the docket Jan. 1, 1856.	Number added during the year 1856.	Number disposed of in 1856.	Number remain- ing undisposed of Jan. 1, 1856.
The five southern circuits..	1,576	1,423	1,721	1,279
Seventh circuit.....	1,481	2,037	1,782	1,736

had jurisdiction, was, according to Ashley, equal to at least one-third of that of all the fifteen slave states.<sup>1</sup>

Great as was the advantage which the slavocracy acquired by the law of 1837, they did not consider themselves sufficiently secured by it. Only after they had succeeded in making sure of a permanent majority in the judiciary committee of the senate, did they feel entirely certain that a majority of the justices of the supreme court of the United States would profess the doctrines relative to slavery which were agreeable to the slave interest, whenever a legal question bearing on slavery arose. The proposals of the judiciary committee of the senate controlled, as a rule, the position of the senate on the nominations of the president to the supreme court, and, beginning with Tyler's administration, the committee had, on every occasion, criticised the nominations in such a way as to make it a moral certainty that the opinions of the nominees on the slavery question would be of great weight in, if not decisive of, the question of their confirmation.<sup>2</sup> At last even southerners of tried probity and great consideration found no favor in their eyes when, on the slavery question, they had professed constitutional convictions,—convictions which were condemned by the radical slavocrats, during the development of the struggle, as dangerous heresies, with an intensity to which time only added strength.

Notorious as these facts were, no documentary proof of them could be produced because nominations were considered in secret session, and further, because the sen-

<sup>1</sup> Iowa, Wisconsin, California, Minnesota and Oregon had, according to the census of 1860, together, a population of 2,040,841, while the white population of the newly admitted slave states, Florida and Texas, amounted to only 459,092.

<sup>2</sup> See the interesting proofs Ashley gives of this in the speech here cited. *Congr. Globe*, I Sess. 36th Congr., App., p. 367.

ators who allowed their votes to be determined by regard for the slavery question were not so unwise as to say so openly.<sup>1</sup> In any event they would attain their object most surely and completely by avoiding to give even the slightest intimation of their motive, since, by such avoidance, they would, for the most part, deprive criticism of all foundation, especially as recognized judicial ability and spotless personal honor were still considered absolutely necessary qualifications for a seat on the supreme bench.

If the possession of these qualifications was denied repeatedly and emphatically to several judges, in consequence of the *Dred Scott* decision, the reason was partly this, that people had become too excited not to be unjust. But the principal reason was the much more important fact that, on this question, men's thoughts and feelings had grown so divergent that at last they were utterly incapable of understanding one another. Spite of the absence of documentary evidence, it would be ridiculous to deny that orthodoxy on the slavery question had come to be a qualification for a seat on the supreme bench; but it does not, therefore, follow that the judges were unscrupulous partisans, ready, consciously, to surrender their constitutional convictions at the command of the slaveholding interest. What made the opposition between the north and the south so enormous a danger was the fact that the latter was so terribly honest in its faith in

<sup>1</sup> Ashley, indeed, asserted: "Many things have been said and done in the secret sessions of the United States senate, which, if made public at the time, would have consigned the utterer to the shades of private life and the party to a hopeless minority." *l. c.* In view of the agitation begun in 1886 in favor of the consideration of nominations by the senate in public sessions, it is worthy of mention that Ashley was induced, by the facts mentioned, strongly to advocate that course at this time.

all its erroneous doctrines, constitutional, economic and moral, relating to slavery. Slavery had become the formative principle of its entire life to such an extent that on that subject it had gradually and completely lost the power to think and feel aright. What appeared as the conclusion of its chain of reasoning was, in fact, always the starting-point of its argument; but because it was sunk in such deep delusion, it succeeded to perfection in clothing the demonstration of the *a priori* proposition in the form of an objective, legal investigation. With the further development of the struggle, the aim of its political endeavor became more and more the premises of its legal deductions; and the grosser and bolder the sophisms it piled up on this foundation, the more did they become to it subjective truths which were declared with the fullest conviction to be unimpeachable facts or uncontrovertible principles of law. But the laws of the moral order of the world do not surround the judge's bench with a wonder-working atmosphere in which the poisonous germs that fill all the air besides lose their viability. The man who lies down in a swamp must breathe the air of the swamp with all its miasmata. But not only had the entire population of the south fallen victims to the disease — not excepting even those classes whose own interests should have made them the most decided opponents of slavery — but the poison was so powerful and subtle that it carried the evil to the north as a permanent epidemic.

The only question, therefore, could be, what stage of the development of the disease the thought and feeling of the southern members of the supreme court had reached, not whether they had been attacked by it at all. The republican press was, therefore, entirely right in considering a judgment based on the doctrines of the south

a matter of course, and the only thing doubtful whether the judgment of the court and the political question would cover each other, that is, whether the supreme court would, for political reasons, extend its judgment on the legal case before it to a judgment on the political question,<sup>1</sup> by depriving the latter of a lawful foundation through the decision of the constitutional issues involved in it. But on the other hand, the republicans were, for the same reason, wrong in accusing the judges, more or less directly and emphatically, of having debased themselves, against conscience and their better knowledge, to such a degree as to become the slaves of the slavocracy. The guilt of the supreme court was great, but that guilt must not be ascribed to moral turpitude; it must be traced to a want of judgment in things political. Even if the jurisdiction of the supreme court had been undoubted, and if the Dred Scott case had required the decision of the general question, its judgment would not have ended the struggle, because, together with the actual situation, it had, long before this, outgrown the control of formal law. But now its jurisdiction was roundly denied by a political party, which, in the last election, had cast nearly a million and a half of votes; and, in order to pass from the Dred Scott case to the general question of the powers of congress relative to slavery in the territories, the supreme court had to go counter to

<sup>1</sup> Pike wrote on January 5, 1857, to the New York *Tribune*: "The rumor that the supreme court has decided against the constitutionality of the power of congress to restrict slavery in the territories has been commented upon in the most unreserved manner at this metropolis. . . . Many have expressed the opinion that the question would not be met by the court, and numbers are still of that way of thinking. . . . If the court is to take a political bias, and to give a political decision, then let us by all means have it distinctly and now." *First Blows of the Civil War*, pp. 355, 356.

fundamental principles of law which it had itself frequently recognized. But no matter how the question of jurisdiction must be decided, the supreme court now wrongly forced itself between the political parties as arbiter, and this, with a judgment holding that which from the first year of the Union's life under the constitution had been the law of the land to be null and void, because it was an unconstitutional usurpation. The Dred Scott decision would, therefore, remain the greatest political atrocity of which a court had ever been guilty, even if the reasoning of Chief Justice Taney, who delivered the opinion of the majority, were as unassailable and convincing, historically and constitutionally, as it was, in fact, wrong, sophistical and illogical.

Dred Scott was a slave born in Missouri, whom his owner, Dr. Emerson, had taken with him, in 1834, to Rock Island, in Illinois, and from there, in 1836, to Fort Snelling, situated, north of the Missouri line, in the territory of Louisiana. In the year 1838, Emerson returned with Dred Scott, who had not claimed his freedom on the ground of his sojourn in the free state and the free territory, to Missouri, and sold him to one Sandford, of New York. Subsequently, Scott claimed his freedom as against the latter, and the circuit court of St. Louis county decided in his favor. The supreme court of Missouri, however, to which an appeal was taken, reversed this decision and remanded the case back to the circuit court. Before it reached a second decision here, Dred Scott, in November, 1853, entered suit for damages in the circuit court of the United States against Sandford on the ground that the latter had laid violent hands upon him, and, contrary to law, held him in slavery.<sup>1</sup> Sandford

<sup>1</sup> The force and violence as well as the complaint extended to Dred Scott's wife and two children. On this phase of the question I shall

denied the jurisdiction of the court on the ground that Dred Scott, as a negro and the descendant of negro slaves, was not a citizen of the state of Missouri, and therefore could not, by virtue of art. III, sec. 2, § 1, of the constitution, bring suit in a federal court. The court declared this plea invalid, but instructed the jury that Dred Scott, according to the laws in force, had no claim to freedom, and he was, therefore, adjudged to Sandford as his slave. Dred Scott now appealed to the supreme court of the United States. In the spring of 1856 the case came up for argument, but no decision was rendered. Judge Campbell subsequently stated that this was brought about by Judge Nelson, because he had as yet formed no fixed opinion on the question at issue, whether it was necessary for the supreme court to subject the decision of the circuit court to a revision, which decision had declared Sandford's objections to its jurisdiction invalid; and that Nelson's proposition to hear the attorneys of both parties on "that and other questions" again, was unanimously adopted.<sup>1</sup> In republican circles, this

not enter, because the special constitutional questions involved in it have no independent political significance. Even the principal constitutional question I shall discuss as briefly as possible. In what I say, in the text, I shall confine myself, as much as possible, to the political aspect of the question; for that aspect alone gives the case its eminent, historical importance.

<sup>1</sup> See Campbell's letter of November 24, 1870, to G. Tyler, in the latter's *Memoir of Roger B. Taney*, pp. 382, 383. Gooch said, on May 3, 1860, in the house of representatives: "It was not until two of the judges dissented from the opinion of the majority of the court that Dred Scott was a slave, and proposed to publish their opinions, that the majority felt it to be necessary to express opinions in relation to the constitutionality of the Missouri compromise.

"It was then that the court ordered the case to be re-argued for the purpose of ascertaining whether it could be made to appear that that act was unconstitutional." *Congr. Globe*, I Sess. 36th Congr., App., p. 293.

postponement of the decision was believed to be connected with the impending presidential election.<sup>1</sup>

After the case had come up again for argument, the majority of the judges resolved to confine the judgment of the court to the case before them, and Justice Nelson was intrusted with the writing of the argument which was to serve as the ground of the decision.<sup>2</sup> It should have needed no special resolution to confine the judgment of the court to the case before them; such a course should have been considered simply self-evident. This, however, was so far from being the case that the resolution was afterwards reversed, and Chief Justice Taney requested to write the opinion of the court. Nelson had already finished the task intrusted to him, and it now stands as his personal opinion in the records of the Dred Scott case. Hence the *original* and *real* opinion of the federal supreme court is not Taney's, but is to be found in Nelson's argument, and it, therefore, should be examined first. The proper appreciation of the remarkable and sudden change which turned the original minority of the judges into a majority will thus be greatly facilitated.

Nelson was of opinion that the supreme court had no

<sup>1</sup> Judge Curtis writes, on the 8th of April, 1856, to Ticknor: "The court will not decide the question of the Missouri compromise line,—a majority of the judges being of opinion that it is not necessary to do so. (This is confidential.) The one engrossing subject in both houses of congress and with all the members is the presidency; and upon this everything done and omitted, except the most ordinary necessities of the country, depends." Curtis, *A Memoir of Benjamin Robbins Curtis*, I, p. 180.

<sup>2</sup> "The instruction of the majority, in reference to the preparation of this opinion, was to limit the opinion to the particular circumstances of Dred Scott; and Mr. Justice Nelson prepared his opinion, on file, under this instruction, to be read as the opinion of the court." Campbell, in the letter quoted *loc. cit.*, pp. 383, 384.

reason to entertain the question raised by Sandford as to the jurisdiction of the supreme court. The question, what effect the sojourn, voluntarily caused by his owner, of a slave in a free state, had, when the latter was again brought back to the slave state,— that question, Justice Nelson said, had been decided in different ways by the courts of the slave states. The supreme court of Missouri had answered this question in the Dred Scott case, and held that only the law in force in the state concerned governed, and it had further decided that, according to the laws of Missouri, Dred Scott was still a slave. As to the first point, not only he, Nelson, agreed with the supreme court of Missouri,<sup>1</sup> but the supreme court of the United States also had, years ago, laid down the same principle.<sup>2</sup> The decision of the supreme court of Missouri was, therefore, binding on the circuit court, and hence the judgment of the circuit court could now only be affirmed.

<sup>1</sup> He argues thus: "They insist that the removal and temporary residence with his master in Illinois, where slavery is inhibited, had the effect to set him free, and the same effect is to be given to the law of Illinois, within the state of Missouri, after his return. Why was he set free in Illinois? Because the law of Missouri, under which he was held as a slave, had no operation by its own force extraterritorially; and the state of Illinois refused to recognize its effect within her limits, upon principles of comity, as a state of slavery was inconsistent with her laws and contrary to her policy. But how is the case different on the return of the plaintiff to the state of Missouri? Is she bound to recognize and enforce the law of Illinois? For, unless she is, the *status* and condition of the slave upon his return remains the same as originally existed. Has the law of Illinois any greater force within the jurisdiction of Missouri than the laws of the latter within that of the former? Certainly not. They stand upon an equal footing. Neither has any force extraterritorially, except what may be voluntarily conceded to them." Howard's Rep., XIX, Williams' edition, Book 15, p. 724.

<sup>2</sup> Strader et al. v. Graham, Howard's Rep., X, p. 82.

This opinion would not have been very agreeable to the republicans, and an effort would have been made here and there by them to create political capital out of it, as the fact mentioned by Nelson himself, that even the courts of different slave states had given opposite opinions, would have readily lent itself to that purpose. It would, however, have created no excitement at all. Much less would it have been the signal for the breaking out, with redoubled violence, of party war. The Dred Scott decision became such a signal only in consequence of the voluntary resolution of the supreme court to use it as an opportunity, by their authoritative decree, to cut the Gordian knot of the territorial question, and thus solve the great problem which the politicians had sought to solve, always with the negative result of an aggravation of the evil: the problem of the permanent exclusion of the slavery question from politics.

Before the opinion which Nelson had prepared was read,<sup>1</sup> and in Nelson's absence,<sup>2</sup> Justice Wayne moved to decide all the questions covered by the record, because the public were of opinion that this would be done. This proposition and the further motion to substitute Taney for Nelson as the spokesman of the court were adopted. Whether all the justices except Nelson were present at this session, who spoke and voted against Wayne's propositions, and how strong the opposition was, does not appear from the sources of information at my command. Only this is shown by Campbell's letter cited above, that there was opposition; and the published opinions prove that Wayne alone fully agreed with Taney, that Daniel and Campbell differed widely in their reasoning

<sup>1</sup> Campbell in the letter cited.

<sup>2</sup> Nelson to S. Tyler, May 13, 1871. Tyler, *loc. cit.*, p. 395.

from that of Taney, that Grier and Catron, together with Nelson, held the first judicial opinion to be sufficient, and lastly that McLean and Curtis did not approve the judgment of the court in a single point.

Campbell assures us that Wayne had not informed him, and — so far as he knew — had not previously informed the other associate justices of his views, and that the consultations and conclusions of the court had not been influenced by any person not belonging to it, in any manner whatever — especially not by Buchanan. This last is the only thing of importance, and the presumption is that it is entirely in harmony with the truth, easy as it is to conceive that, at the time, people were by no means generally convinced that it was the truth. But even if none of the judges had ever spoken a word outside the court room on the Dred Scott case, the incontrovertible fact remains that Wayne's motions and their adoption were prompted by purely political considerations, and that is, evidently, the main point. Wayne's own statement excludes all doubt of this. Taney's opinion, he said, corresponded both in its argumentation and in its conclusions so completely with his views, that he gave up the idea of handing in an opinion of his own, although he had prepared one, believing, at first, that it would be both necessary and proper to do so. He did not, however, consider it superfluous to try to justify the conclusion reached, to decide "every point which was made in the argument of the case by the counsel on either side of it." But of the technical arguments intended to show that this mode of procedure was regular, he places the political motive first and foremost as the governing one. "The case," he says, "involves private rights of value, and constitutional principles of the highest im-

portance, about which there had become such a difference of opinion that the peace and harmony of the country required the settlement of them by judicial decision."<sup>1</sup>

Chase had already written in 1847: "If courts will not overthrow it (the pro-slavery construction of the constitution), the people will, even if it be necessary to overthrow the courts also."<sup>2</sup> And now the supreme court of the United States undertook, in the judgment rendered on the second day after Buchanan's inauguration, to restore peace and harmony to the country by forcing upon it the pro-slavery construction of the constitution in its most radical form, as an inviolable law. But since this could not be done by the simple decision of the case before it, it pleased the court to decide all the questions discussed by counsel. It was thus placed beyond a doubt that the audacious undertaking would turn out to be a service rendered to the cause of liberty, and that Chase's prophecy would be fulfilled. Under the combined pressure of their historical development, of their actual circumstances, of their moral convictions and the people's own constitutional views, even this formally final judgment was fated to be ultimately reversed; but the victory was destined to be rendered exceedingly difficult by the conservative feelings and scrupulous fidelity of the people to the laws. Yet even the most refined judicial subtlety could not convince the American masses that a court might, for political ends, decide every controverted constitutional question which could in any way be brought into connection with a concrete case at law; and "decisions" of the supreme court based upon a usurpation, boldly and openly admitted, signified nothing in their eyes except to the extent that they made it their duty to wage

<sup>1</sup> Howard's Rep., Williams' ed., Book 15, p. 721.

<sup>2</sup> Warden, Life of S. P. Chase, p. 313.

the war against slavery more energetically than ever, because such decisions proved that even the supreme court of the United States had completely succumbed to the deadly influence of the pestilential breath of slavery. And this must all the more certainly be the effect of the work of "peace," to which the supreme court of the United States believed itself called, since Taney's argument — although it preserved much better by its technical form the appearance of impartial pragmatism — placed the fact that the supreme court had been guilty of a usurpation in a more glaring light than had Wayne's imprudent frankness.

Two principal questions, said the chief justice, were presented by the record: 1st. Had the circuit court jurisdiction? 2d. If it had jurisdiction, is the judgment it has given erroneous or not? From the way in which Taney put these questions it is plain that the second supposed that the first must be answered in the affirmative. He, however, in the name of the court, answered it in the negative.

The negative was founded on the claim that the descendants of negro slaves were not citizens within the meaning of the constitution. The demonstration of this proposition was, in its essential parts, not juridical but historical. From the fact that, on both sides of the Atlantic, negroes had always been considered subordinate beings and had no rights except such as were granted them,<sup>1</sup> it was inferred that the framers of the constitution could not have looked upon negroes as co-possessors of sovereignty, that they could not have looked

<sup>1</sup> "They were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them."

upon them as citizens. And so it was inferred from the exclusive right of naturalization vested in congress that it *could* not have been intended<sup>1</sup> to allow the states to make citizens of persons of color, because as such they would have been much more dangerous to the peace and safety of a great part of the Union than the few foreigners by reason of whose naturalization a state would perhaps have given good ground for complaint.

When the chief justice of the United States advanced such shallow and arbitrary reasoning as constitutional arguments which were to govern in the decision of legal questions of the most eminent importance, and, in the real meaning of the words, of awful political significance, what became of the proud claim of the American people that they had "a government not of men, but of laws?" With such a method of interpretation, there was nothing that could not be tortured out of the fundamental law of the Union, and nothing one wished to find that could not be discovered in it.

If, as should have been done, the question of fact were examined, whether, in the United States, negroes born free could ever, or under certain conditions, be "citizens of the United States within the meaning of the constitution," a very different result would have been reached; and Taney's own reasoning pointed out the road to be taken in such an investigation.

After he had correctly shown that a citizen of a state is not always necessarily a citizen of the United States, and why he is not,<sup>2</sup> he just as correctly proves that all who

<sup>1</sup> "We cannot fail to see that they could never have left with the states a much more important power."

<sup>2</sup> I, however, share the opinion of Justice Curtis, that, even before the adoption of the fourteenth amendment, "every free person born on the soil of a state, who is a citizen of that state by force of its

were citizens of the individual states, at the time of the adoption of the constitution, became citizens of the United States also. But now, instead of inquiring — as he had promised to do<sup>1</sup> — whom the constitutions and laws of all the states had recognized as citizens, he proves (!) from the views concerning negroes then prevailing, from the fact that the celebrated introductory sentences of the Declaration of Independence should not be understood in their literal sense, and from the provision of the constitution that the importation of slaves should not be prohibited the states until the year 1808, that “the general terms in the constitution of the United States as to the rights of man and the rights of the people” should not be extended to the negro race, and that it was not intended to grant them any share in the blessings of the provisions of the constitution. This was his answer to the question, what had been the law in the several states relating to free persons of color? Spite of his great age, Taney was still in full possession of his intellectual faculties, and justice to the republicans, therefore, demands the admission that he had not made it an easy matter for them to believe in his *bona fides*. That there had been free persons of color who were citizens, in the different states, was as undeniable a fact as the Declaration of Independence and the constitution itself; it was moreover a universally known fact.<sup>2</sup> But because Taney,

constitution or laws, is also a citizen of the United States.” Williams, loc. cit., pp. 771, 772.

<sup>1</sup> “It becomes necessary, therefore, to determine who were citizens of the several states when the constitution was adopted.”

<sup>2</sup> See the proofs of this in the opinion of Judge Curtis. Williams, loc. cit., pp. 770, 771. Other interesting proofs are to be found in Congr. Globe, 1 Sess. 35th Congr., pp. 211, 212. Particular attention should be called to the fact that Virginia in 1783 repealed a law of May 3, 1779, according to which only white men could be citizens,

however, did not really *examine*, but only sought to prove an untenable assertion, under the guise of investigation, he had to substitute sophistical reasoning on the proposition to be proven for the answer to his own question; for this answer overthrew his argument entirely. No matter how all further questions, and especially that in the present case, *i. e.*, the Dred Scott case, in relation to the constitutional *status* of free persons of color, might be answered, this much is certain, that if all those who, at the time of the adoption of the constitution, were citizens of the separate states became citizens of the United States likewise, and if there were free persons of color at that time in certain states who were also citizens, then the incorrectness of what Taney sought to prove, and pretended to clothe with the binding force of a judicial decision, was demonstrated, *viz.*: that persons of color could not be, and had never been, citizens of the United States, within the meaning of the constitution.

But, certain as it was that Taney had not proven his proposition, he could appeal in its favor to the decision of a state court,<sup>1</sup> to the official opinions of two attorneys-

and according to the new law "all free persons born within the territory of this commonwealth . . . shall be deemed citizens of this commonwealth." The boldness of the attempt, however, to dispose of the matter by vague, general reasoning on notorious facts is placed in the clearest light by this, that the motion of South Carolina to insert the word "white" between "free" and "inhabitants" in the fourth article of the Articles of Confederation, was denied. The article reads as follows: "The free inhabitants of each of these states — paupers, vagabonds and fugitives from justice excepted — shall be entitled to all privileges and immunities of free citizens in the several states."

<sup>1</sup>The State *v.* Claiborne, 1 Meigs (Tenn.), p. 331. "The citizens spoken of (art. IV, sec. 2, § 1) are those entitled to all (!) the privileges and immunities of citizens. But free negroes were never, in any state, entitled to all the privileges of citizens, and consequently were

general<sup>1</sup> and to a law of the United States.<sup>2</sup> Hence this decision could not create the impression that "the pro-

not intended to be included when this word was used in the constitution;" and, "the meaning of the language is that no privilege enjoyed by, or immunities allowed to, the most favored class (!) of citizens in said state shall be withheld from a citizen of any other state." There is not a word in the constitution that affords the least support for the claim that it recognizes different classes of citizens. Under such a construction what would become of women and minors?

<sup>1</sup> Wirt's Opinion of November 7, 1821 (Op. of Att'y Gen'l, I, 506 ff). The opinion, however, does not go so far as would appear from Taney. Wirt only says that in Virginia *free* persons of color are not citizens within the meaning of the constitution. He says: "Looking to the constitution as the standard of meaning, it seems very manifest that no person is included in the description of citizen of the United States who has not the full rights of a citizen in the state of his residence;" and, "I am of the opinion that the constitution, by the description of 'citizens of the United States,' intended those only who enjoyed the full and equal privileges of white citizens in the state of their residence." These definitions seem to me by no means happy. Practically, little can be made of these sentences. Although, for instance, a person can unquestionably be a citizen without having the right of suffrage, and, conversely, have the right of suffrage without being a citizen, it can scarcely be questioned that the right of suffrage belongs to the "full rights of a citizen." An exact and exhaustive enumeration of the "full rights of a citizen" — both of the United States and of the separate states — it has not yet been possible to make; and Caleb Cushing says, in an official opinion on the provision of the constitution that "the citizens of each state shall be entitled to all privileges and immunities of citizens of several states:" "What that means, if it means anything, it is very hard to say" (loc. cit., VIII, p. 304). But be this as it may, Wirt certainly does not say that free persons of color in *no* state have or can have the "full rights of a citizen," and hence never can be citizens of the United States. Whether he thought so I do not know, but it is certainly probable that he did, since he says that a negro or mulatto would be eligible to the presidency of the United States "if nativity, residence and allegiance combined (without the rights and privileges of a white man) are suffi-

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<sup>2</sup> A law of May 3, 1813, provides that, after the close of the war with England, "it shall not be lawful to employ on board any of the pub-

slavery construction of the constitution" had won a new victory. It was only making sure of a success long since achieved — great enough, indeed, to embitter the republicans, but neither involving so vital a constitutional principle nor politically of so much importance as to

cient to make him a citizen of the United States in the sense of the constitution." The founders of the constitution, as well as Wirt, would certainly have considered a colored president an absurdity, but this fact does not make the objection a constitutional argument. The Philadelphia convention did not consider all the subtle questions which would grow out of the question of citizenship; least of all did it dream of this logical consequence, because a colored president was a practical impossibility.

The second opinion comes from Caleb Cushing. Taney does not give any reference to it, and I have been able to find none which treats the question directly. If, as I suppose, that of July 5, 1856, on the "Relations of Indians to Citizenship" (*loc. cit.*, VII, p. 746), be meant, it might have remained unmentioned, as Cushing simply expressed, in passing, his agreement with Wirt, but gives no reason for his opinion beyond that.

lic or private vessels of the United States any person or persons except citizens of the United States, or persons of colour, natives of the United States." (*Stat. at L.*, II, p. 809.) From this opposition of terms, however, it does not necessarily follow that, in the opinion of congress, persons of color could never be citizens of the United States. Nobody questioned that the great majority of them were not citizens. But it was in contradiction with the wording of the law to construe this passage to the effect that persons of color, even if they were not citizens of the United States, might be employed on American ships, provided they were natives of the United States. Indeed, one must so construe it, unless it be assumed that the congress of 1813 and that of 1803 had thought differently on this constitutional question, for in a law of February 28, 1803, already quoted in the second volume of this work, we read: "Any negro, mulatto, or other person of color, not being a native, a citizen or registered seaman of the United States." (*Stat. at L.*, II, p. 205.) Taney cited also the naturalization law of March 26, 1790, and the militia law of 1792, in support of his position. I do not, however, think it necessary to enter into a discussion of this question, because he could make it say what he wanted to find in it only by an over-artful interpretation.

constitute the immediate occasion of the entrance into a new phase of development of the struggle over the slavery question. This was effected solely by the fact that Taney or the supreme court was not satisfied with deciding the case before him, and which was disposed of when it was decided that the circuit court had no jurisdiction.

After that there was no case at law before the court. But, according to the constitution, the courts of the United States are authorized to decide *cases at law* and not *legal questions* in general, the authoritative decision of which may, for one reason or another, seem desirable.

How difficult it was to meet this objection to the claim that Taney's further inferences and amplifications constituted a binding judgment, based as the objection was on principle, appears most clearly from the more than bold manœuvre Senator Benjamin had recourse to. The supreme court, he said, had denied the jurisdiction only of the circuit court, but not its own jurisdiction, and the question of its own jurisdiction had been answered in the affirmative by all the justices.<sup>1</sup> Benjamin's great reputation as a learned and astute lawyer was well deserved, but this claim was an absurdity pure and simple. This case was one in which the supreme court had not original jurisdiction; it sat as an appellate court, and the constitutional grounds of want of jurisdiction applied equally to both courts. The judges were no more unanimous on the question of jurisdiction than on most other questions. Benjamin's claim was correct only to this extent, that all the judges claimed jurisdiction in one way or another and in one sense or another; but some of them believed, for various reasons, that the case should not be decided on the basis of the formal, legal question, whether Dred Scott had a standing in the federal courts,

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., pp. 1069, 1070.

while the others were of the opinion that, notwithstanding the decision of this question in the negative, they had power to decide further questions; but no judge made the preposterous claim that the jurisdiction denied the circuit court belonged to the supreme court.

There is no reason why we should examine the views of each judge on the question of jurisdiction. If anything besides the want of jurisdiction of the circuit court was "decided" in the *Dred Scott* case, it is contained in Taney's opinion, and hence only the reasons he assigns for going beyond this decision can be considered authoritative, *i. e.*, the decision of the court.

Taney was of opinion that the claim that, with the decision of the want of jurisdiction of the inferior court, the power of the supreme court to render any legally binding decisions in the case before them was exhausted, was based on the error that a fundamental principle which has force only as regards the judgments of state courts could be extended to the judgments of United States courts; when the judgment of a United States circuit court was brought, by writ of error, before the supreme court, the whole record came before the latter for examination and decision, and if the sum in litigation was large enough, it was not only its right but its duty to examine the whole case as presented by the record, and, if the circuit court had fallen into any material error, to reverse the judgment and remand the case; and, added he, "it is the daily practice of this court, and of all appellate courts where they reverse the judgment of an inferior court for error, to correct by its opinions whatever errors may appear on the record material to the case; and they have always held it to be their duty to do so where the silence of the court might lead to misconstruction or

future controversy and the point has been relied on by either side and argued before the court."

It could not be surprising that laymen allowed themselves to be overawed by the statement made with so much positiveness by the aged chief justice concerning the practice of all appellate courts; but every jurist could not but perceive, at the first glance, the bold sophistry by which Taney endeavored to explain away the usurpation of the supreme court. In the present case no "misconstructions" or "further controversies" were possible, because it was not remanded to the inferior court to be again examined and decided, but was simply adjudged dismissed for want of jurisdiction, *i. e.*, the essential, actual condition precedent to the practice of appellate courts of which Taney spoke was wanting. That what Taney said of that practice was, in itself, correct, was a matter of utter indifference, as it did not apply here. Taney himself subsequently said that the decision of the other questions had no significance, so far as Dred Scott and Sandford were concerned. But, we are further told, *that* could not justify the "sanctioning" of an evident error in the judgment of the inferior court, if evil consequences, in other cases, might follow. The preceding admission lost nothing of its importance by this argument, but it must have opened the eyes of even thinking laymen to the previous sophism. Common sense was a higher forum than the supreme court of the United States, and it could not be convinced that the supreme court of the United States could recognize as correct all the rulings of an inferior court when it entered into no examination of those rulings, because its decision was to the effect that the inferior court should have concerned itself no further with the case than to declare its want of jurisdiction.

The reason why the majority of the judges, after the rendering of the judgment in the *case at law*, undertook to decide all other kinds of questions, was doubtless to prevent further controversy, but controversy in the territories and about the territories, in congress, *i. e.*, Taney's learned talk was only an unhappy effort to cover the nakedness of Wayne's honest admission that the court had allowed itself to be determined by political considerations, with a fig-leaf of bad jurisprudence, the outgrowth of bad logic. Hence the reasoning by which the further principles were supported was political, although clothed in rich legal raiment. The constitution speaks only of the territory that belonged to the United States at the time of its adoption, and speaks of it only as property in the quality of an object of value, and does not grant congress, in the only clause in which it speaks of it, general and unlimited legislative power in relation to it, a power which would be incompatible with the fundamental principles of the constitution; still less can such power over the regions subsequently acquired be inferred from that clause; they were acquired for the people of the individual states, and the citizens of these states have, therefore, an equal right to them and in them; the constitution makes no difference between slaves and other property, but distinctly and expressly recognizes slaves as property; hence congress cannot prohibit the bringing of slave property into the territories, and, therefore, the Missouri Compromise, which prohibits slavery in the territories north of thirty-six degrees, thirty minutes, is null and void, because in conflict with the constitution — such are the principal propositions to which Taney's further reasoning leads. The refutation of these propositions, in detail, is contained in the history of slavery in the preceding volumes of this work, and hence cannot be here

undertaken anew, nor is it necessary it should be. We would only say a few words on two points.

The territorial acquisitions were not made for the people of the individual states, but for the United States, as is expressly stated in all the treaties relating thereto. Taney's argument was an intellectual sword-player's trick, by which he made what he undertook to prove the presupposition of his demonstration. Precisely in the constitutional relation of the federal government to the territorial possessions of the Union had the national phase of the idea of the federal state found the most pregnant expression, and Taney took the principle of the confederated state as the starting-point of the proof of the proposition which was only the application of that principle to the slavery question in the territories.

Still clearer was the utter untenableness of the second claim, without which it was impossible to reach the concluding proposition, which was the sole object of the entire second part of the "decision." The constitution made a difference between slaves and other property, and this by the very clause relating to the delivery of fugitive slaves, to which Taney appealed. Why did it not also provide that horses, oxen and hogs which had strayed into another state should be delivered to the owner? Plainly because that was self-evident. In the case of slaves, however, an express provision was necessary, precisely because the United States as such did not look upon them as property, and *this*, not what Taney claimed, was "expressly" provided for in the text of the constitution which recites that persons escaping from a state who by the laws thereof were held to service or labor should be delivered up on claim. The constitution, therefore, only provided that the laws of the several states on slavery should be regarded as controlling by all

other states, to this extent, that they would, in a given case, have to perform a corresponding duty to them.

If it were to be inferred from this provision that the constitution of the Union looked upon slaves as property, then, as the *Washington Union* in an article of November 17, 1857, very rightly said, the ultimate consequence of the Dred Scott decision was that the states themselves could not declare slaves brought within their borders free.<sup>1</sup> Benjamin denied this because the constitution prohibited only the government of the Union, and not the states, to deprive any one of his property "without due process of law."

<sup>1</sup> "The constitution declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.' Every citizen of one state coming into another state has, therefore, a right to the protection of his person, and that property which is recognized as such by the constitution of the United States, any law of a state (!) notwithstanding. So far from any state having a right to deprive him of his property, it is its bounden duty to protect him in its possession.

"If these views are correct — and we believe it would be difficult to invalidate them — it follows that all state laws, whether organic or otherwise, which prohibit a citizen of one state from settling in another, and bringing his slave property with him (even several slave states had done so), and most especially declaring it forfeited, are direct violations of the original intention of the government, which, as before stated, is the protection of person and property, and of the constitution of the United States, which recognizes property in slaves."

And so Pugh, of Ohio, said: "If the constitution of the United States gives this form of property its peculiar protection . . . and the right to carry it, it is carried into every state over the constitution and laws of the state; for the constitution of the United States is supreme above the constitutions and laws of the states, and it means this or it means nothing. There is no distinction, there can be none made." *Congr. Globe*, II Sess. 35th Congr., p. 1250. To this faithful shield-bearer of slavery this consequence seemed an abomination.

To this it could be answered that all the state constitutions contained the same provision. But even if such were not the case the argument would not have had the slightest weight. The constitution of the United States was above all state constitutions and state laws. If a state deprived an owner of that which the constitution of the United States "expressly" declared to be property, because it was not property within the boundaries of that state, the constitutional or legislative provision which deprived him of it was null and void, because in conflict with the constitution of the United States. That Taney did not draw this last consequence was intelligible enough, for the ultimate foundation of all claims of the slavocracy was the principle that the states had reserved their full sovereignty with respect to slavery — the importation of slaves alone excepted. In order to open all the territories to slavery he had, in the name of the supreme court, to interpret *into* the constitution principles which overthrew the fundamental principle of the slavocracy. Even if the Dred Scott decision had met with no opposition from any quarter whatever, it could not possibly be abided by, on this account: the supremacy of the slave-holding interest over the Union, based upon state sovereignty, could not but ultimately develop into a demand for the unconditional nationalization of slavery.

Alexander H. Stephens frankly admitted that the Dred Scott decision would never have been made if the agitation and discussion of the slavery question had not preceded it, and brought to light the clear principles on which it is based. These were, therefore, *new* principles of which the framers of the constitution and those who, in the earlier decades of its history had, as legislators, presidents and judges, to apply them, knew nothing.

Yet, on this decision, Stephens claimed the fate of the country hung.<sup>1</sup>

What then had become of the superhuman wisdom of the "fathers," and what did the hyperwise politicians think they might not venture with the common sense of the people? The third generation since the adoption of the constitution had entered on the stage, and now a few aged judges had to save the country—thanks to the light obtained by the politicians—by overthrowing what had hitherto been considered constitutional law and what had always, up to the most recent time, been enforced in the legislation of the land. Even if the question had come before the supreme court in such a way that it must give a judgment, and if all the eight associate justices had unqualifiedly agreed to every word of Taney, the decision would have been a political enormity. If the former condition existed, political considerations neither could nor should have been excluded, but they must bring the judges to subordinate their own legal views to the constitutional law which had hitherto been in force, simply because, for almost seventy years, it had been the constitutional law actually accepted; for the history of the country could not be altered by judicial decree; and it was as impossible to change the actual conditions which had grown up under this constitutional law as it was to allow them to continue in a constitutional state with all their practical and legal consequences, while declaring their utter legal nullity. But not only was there no need

<sup>1</sup> "On the principle (of the Dred Scott decision) depended . . . in all probability the destiny of this country. And who is vain enough to suppose that the Dred Scott decision would have been made but for the agitation and discussion which preceded it, and the sound clear principles which that discussion brought to light." August 2, 1859, in Augusta, Ga. Cleveland, Al. H. Stephens, in *Public and Private*, with Letters and Speeches, p. 644.

of the decree, but it was against right and issued confessedly on political grounds. The opinions of the majority differed from one another in their argumentation, and to some extent in their conclusions, so widely that, taken together, they constituted an inextricable tangle, and two of the judges not only opposed the chief justice on one point after another, but the severest moral condemnation could be heard in their juridico-historical deductions, spite of their calmness and strict pragmatism. How could the opposition fail to look upon the judgment, legally as an invalid usurpation and as a perversion of the law, never to be recognized, politically as an absurd and bold assumption, and morally as an unparalleled prostitution of the judicial ermine? The supreme court of the United States had wished to put an end to the controversy, and all it did was to add fuel to the flames which had already risen so high during the presidential campaign, and to drag itself down into the dirt, in the eyes of one-half the people. The last strong bulwark against the revolutionary spirit awakened by the triumphs achieved by the slavocracy and its northern following was broken down.

The senate, or a committee of the senate, in its name, sent thousands of copies of the opinion, without delay, throughout the country. The republicans might rejoice that, from this place and in so forcible a manner, evidence was immediately borne before the whole people, that what appeared in the garb of a judicial decree was, in reality, only a campaign document. Of its own free will, the supreme court of the United States had taken the initiative for the democratic party in the sense of the radical southern wing, and sounds of jubilation from the halls of the senate announced the great fact to the entire country.

## CHAPTER II.

## THE LECOMPTON CONVENTION.

The Washington correspondent of the Charleston *Mercury* had said of Buchanan, in a report on the cabinet which Polk had formed: "He is known to be an able, moderate old Hunker—very timid and hates trouble." The twelve years which had passed since then had thinned and bleached Buchanan's hair, and now a glance at the full, closely shaved face sufficed to convince one of the correctness of this description. In private life he could unquestionably knock at every door with the assurance of being accorded an honest welcome; for his carriage and stately form, no less than the expression of his not unremarkable countenance, showed him at once to be a gentleman, even to the unpracticed eye. In the line that lay over his heavily arched brows above his clear, bright eyes, unstudied dignity and self-consciousness too highly strung vied with each other for the mastery, but he neither awed nor repelled one, for the good humor and the enjoyment of physical comfort stamped on the lower half of his face, and his broad, double chin, acted as a counterpoise to it. One could believe his admiring friends that the figure he cut at the court of Queen Victoria met with the applause of even the exacting English aristocracy, and that his skill and tact as a diplomat were recognized by English statesmen; while the fact that, at the well-provided table and the chatty tea, he was a stimulating and winning talker—too inclined to teach, at times—did not fail to make him some enemies. But the person who, judging from Buchanan's appearance, saw in him a great statesman, must have

been either a very bad physiognomist or have had a very unclear idea as to what the requirements of a statesman are. If this man was a great character, nature in framing him must have been taken with the strange whim to make the form a mask to hide the contents. This flesh was evidently too sensitive not to be always very much inclined to purchase freedom from trouble, care and danger, at a high price. But, at the same time, his vanity was great enough, notwithstanding all this, to play for the highest prize, and his vain self-reliance could not but grow, through his great degree of weakness, to senescent wilfulness, and this all the more the deeper he was dragged into the whirlpool of the conflict of overpowerful actual events, promoted as much by his marrowlessness as by his blind self-reliance. Weakness, self-overestimation and wilfulness — a more disastrous combination of qualities could, under existing circumstances, be scarcely imagined.

Self-overestimation was the warp of his unfortunate policy, weakness and wilfulness its woof. That he did not hope for a stormless future as confidently as one might suppose from his inaugural address is undoubted. According to this, it might appear as if, after the publication of the announced Dred Scott decision, he could descry no darker cloud in the heavens than the overflowing coffers of the treasury, for the relief of which he made various propositions. Little as one might think of his statesmanlike capacity, to impute such a lack of judgment to him as to assume that that was his real opinion was simply absurd. But he evidently cherished the happy belief that he would succeed, by his superior diplomatic skill, in so moulding and directing things that, gradually, the ship of state would sail in smoother waters, and that at least his administration would re-

main free from the more violent perturbations which might portend some great catastrophe. The politician who knew not how to introduce the moral powers of the national life as an element into his calculations, but considered the solution of every problem possible, by means of art debased into a trade, might find some ground for this illusion.

Buchanan's first difficulty and danger grew out of the split in his own party in respect to the authentic interpretation of its creed on the territorial question. Although he knew perfectly well that he owed his nomination to the circumstance that, to use the felicitous expression of the New Orleans *Delta*, he could prove "an alibi"<sup>1</sup> in the case of the Kansas bill, he had, even before the election, frankly declared in favor of the view taken of it by the south.<sup>2</sup> But he was cautious enough to so declare himself only before his neighbors who had come to congratulate him on the result of the state elections in October; and, although he may not himself have brought it to pass, it was certainly very agreeable to him, that his remarks did not find their way into the press, although he had carefully committed them to writing. Now he could, in accordance with his whole conception of the controversy, harbor the fond hope that, so far as the democratic party was concerned, this attitude of his would have no serious and permanent consequences. The leaders, in the debates on the Kansas-Nebraska bill, and then again in Cincinnati, agreed to recognize the courts as the competent forum, wherein to settle the contro-

<sup>1</sup> The New Orleans *Delta*, Dec. 19, 1857.

<sup>2</sup> "This does no more than . . . recognize the right of a majority of the people of a territory, when about to enter the Union as a state, to decide for themselves whether domestic slavery shall or shall not exist among them." Curtis, *Life of J. Buchanan*, II, 176.

verted question, when the right of self-determination of the territorial population in respect to slavery came into force. Now the supreme court of the United States had decided, in the sense of the south, and even if the republicans denied this part of the judgment the binding force of law, because *obiter dicta*, still the Douglas democrats were bound in honor by that agreement to submit to the decree.

That the submission would be unreserved and uncomplaining Buchanan scarcely expected, spite of his self-complacent optimism. He knew very well that Douglas and his associates had not stopped at squatter sovereignty because their own convictions were an insurmountable barrier, but because they had considered it impossible to draw the majority of their constituents beyond that line. If, in this matter, these cool, calculating, political wire-pullers, with their aridity of heart and their ice-bound consciences, were not involved in an inconceivable delusion, the manœuvring even now could not be too cautious, for a judicial decree was not a charm by means of which convictions could be obliterated. For this reason it was deemed advisable, so far as the internal state of the party was concerned, to act as if the controversy had to do with a purely theoretical question. Would not the vanquished become all the more rapidly and more easily reconciled to their defeat, the less they were made to feel formally and materially that a deadly blow had been dealt them? The more the internal dissensions in the democratic party threatened to grow, in consequence of the Dred Scott decision, the more necessary it was to have it outwardly appear that the party presented a united front. If its disruption could be prevented at all, the first pre-condition thereto was the knitting of bonds so firm and lasting that the time needed for a new intergrowth would be obtained.

These must have been the considerations that guided Buchanan in the formation of his cabinet, if in forming it he was guided by any general political ideas at all.

Cass was secretary of state. He was certainly not chosen for the first place because he was the father of squatter sovereignty; but he was its father none the less, and therefore the suspicion that the adherents of that doctrine were to be treated henceforth as democrats of the second class could be warded off by pointing to the selection made of him. But whether they would consider this guaranty sufficient was all the more doubtful, as Douglas, although he had adopted the Cass changeling, was by no means Cass's political twin brother, and had long since acquired an incomparably more important position in the party than the one-time leader of the northwestern democracy. The New York *Tribune* dispatched the latter with the declaration that he was "the most venerable office-seeker in America."<sup>1</sup> Even from the mouth of an acrimonious opponent, Cass might well have claimed a somewhat less depreciatory judgment, but there was much truth in the statement. He had always been greatly overestimated, and now he was really little more than a great name. People did not criticise or rebel against the tradition which made him one of the giants of a generation of whom only a few still remained on the stage; but no one looked upon his name as a programme; he was the stately figure-head of the ship of the administration.

The conduct of the treasury department was confided to Howell Cobb. He had, for a long time, been numbered among the magnates of the first rank of the party, and even his opponents readily admitted that he was a man of real talent; but it could not be inferred from his

<sup>1</sup>The N. Y. *Tribune*, March 7, 1857.

career hitherto, that he would prove himself specially qualified for this office. He was not called to the cabinet as a tried financier; but he was considered, more than any of the other secretaries, and particularly more than Cass, a political minister. It was not long before he was rightly looked upon as the very soul of the cabinet, so far at least as the cabinet seemed to have any soul; but what made him such was his personal qualities and not his programme, while it was believed that he owed his appointment, in great part or even mainly, to the role he had played as leader of the "Union party" of Georgia, in the disturbances of 1850-1851. This was, perhaps, correct; but to attach much importance to that fact was certainly very hazardous. We have shown in a previous volume in what a peculiar light the "Georgia platform" placed the fidelity of the state to the Union—a platform the praises of which were sung with so much enthusiasm in the north. Since then things had taken a long stride further, and the times had assumed a very different character. That the Cobb of 1857 was still the Cobb of 1850-1851 was, to say the least, only an undemonstrated assumption. The man who based his confidence that the attitude of the administration in the sectional quarrel, at least in respect to secessionist tendencies, would be a correct and vigorous one, on this ground, might well beware lest he built on sand. That the two cabinet places which, according to an old tradition, were considered the first, were given to Cass and Cobb, had to be interpreted to mean that Buchanan, at this time, certainly did not look upon it as a self-evident consequence of the triumph of the radicals of the southern states, that the helm of party policy was to be directed solely in accordance with their compass.

On the other hand, he was just as far removed from

considering it necessary to hold them more severely in check on account of that great victory. This was made evident by the selection of Jacob Thompson to be secretary of the interior, for he had been, in 1850-1851, in Mississippi, as zealous an agitator in the camp of the radicals as was Cobb in Georgia, for the ratification of the compromise, and the republicans at least claimed that he was called to the cabinet precisely on this account; for, although he had sat many years in the house of representatives, he had left his name, in other respects, in the historical records of the country only as the ardent defender of the foul repudiation experiment of his adopted state. Buchanan, therefore, seemed to wish to have the same sun shine on, and the same wind blow for, both wings of the party—as the *New York Tribune* said—with the limitation that he did not invite one of the great “Fire Eaters” to his counsel board, but, with commendable deliberation, gave the radicals as unimportant a representative as possible.

J. Toucey of Connecticut, the secretary of the navy, was politically Buchanan’s own reflected image. He was indebted for his election to the senate to the support of some pseudo-whigs, and the part he played in that body was, during the last years, an outrageous defiance of the political convictions which were obtaining the supremacy in his own state. His term had now expired, and, in Connecticut, the most he could hope for was to be used as a horrible example. Whether as a cabinet officer he could and would render the south as valuable service as he had in the capacity of an orator and constitutional dialectician the future alone could tell. The south certainly owed its thanks to Buchanan for making the stone which the heretical builders of Connecticut had rejected one of the pillars of his administration, for Toucey

was a man of talent and endowed with a certain sharpness. When he entered the arena for the slavocracy, there ran through his arguments a peculiar, clear tone of conviction not to be found even in the constitutional sermons of Buchanan, although Senator Brown of Mississippi had lauded him as just as worthy of the south as Calhoun himself.<sup>1</sup> This man, who knew so well how to arrange southern airs for northern fiddles and northern ears, furnished a good connecting link between the secretaries we have already described, if indeed the latter really differed so widely on constitutional and politico-party fundamental questions as to need an intermediary.

The postmaster-general, Brown, had belonged to the house of representatives for six years, and had also been governor of Tennessee; but the general public knew scarcely anything more about him than that, because of his activity in the interests of his party, he was a valued and esteemed personality in the circles of professional politicians. In the eyes of the machine politicians, he was the most important member of the cabinet, because the patronage of the postoffice department was the largest. It was not to be doubted that he would turn this very large party capital to good account, and to do so was considered the principal task of the postmaster-general.

The secretary of war, Floyd, and the attorney-general, Black, were entirely new leaders on the national stage. Whoever took it into his head to inquire to what merit Floyd owed his elevation had to be content with the answer that he belonged to one of the first families of Virginia. Of Black, too, people could say nothing; but that a judge of the supreme court of Pennsylvania would be an able jurist and a man of honor could not be called

<sup>1</sup> In a letter to S. R. Adams. *The Richmond Enquirer*, Aug. 27, 1856.

in question by the opposition party so long as no facts to the contrary could be adduced.

This cabinet was certainly not an imposing one, and the man who would infer from it the policy which the president had traced out for himself must have had much practice in answering riddles. If one judged from the political weight of this list of names the suspicion suggested itself that Buchanan had in view, not so much the strength of the administration, as to make sure of his own position as actual lord and master; and if one looked at the shading of the party color in the individual members he naturally divined that the president had decided, at least so far as the near future was concerned, in favor of a policy of his own will—a policy which could not be readily distinguished from the total absence, on principle, of a political programme. This was not only the surest, but the only, way to gain time, and it was easily intelligible, if he thought he could live in the hope that the saying, To gain time is to gain all, was applicable now.

He had, in essentials, free scope during nine months, for congress did not meet again until December. The republicans might pluck the Dred Scott decision to pieces, judicially and morally, as much as they pleased, but they could not, by so doing, effect anything of immediate political importance. It entered no one's mind to contest the legal validity of the decision, so far as Dred Scott personally was concerned, and the declaration that the remainder of the decision would never be recognized meant only that the conflict in congress and in the territories would be continued, and that if the party should come into power vacancies on the supreme bench would be filled in such a way that the constitution and justice, humanity and morals, freedom and rational politics,

would get their rights once more. He, therefore, had no reason to trouble himself about the republicans. To keep the different fractions of his own party asunder was the problem he had now to solve, and he thought he could solve it by being obliging to them all. If, by doing so, he satisfied no one, he at least gave no occasion for grievances such that they would openly oppose him. If he continued to hold to this policy when the opposing elements within the party came into collision his fate would furnish another illustration of the truth that the more stools one tries to sit on at the same time the greater is the danger he runs of coming to the ground. For the present, however, he might disregard the warning contained in this old truth, because he expected that, during the nine months, the question which alone gave the controversy the character of a real conflict of interests would find its practical solution. If this expectation were realized it would assume for a time the appearance of an academic question, and then people would have, indeed, to hope that this period would last long enough to permit the wisdom of the politicians, combined with the frequently experienced favor of Providence, to find a way out of the labyrinth before a new crisis could mature. He, however, needed to do nothing to bring about the actual settlement of the question, but to allow things calmly to take their legal course. Then, no matter how the die was cast he could not justly be held responsible for it. When, therefore, people hoped here, and feared there, that he would immediately and of his own free will begin to play the part of the zealous and unscrupulous servant of the slavocracy they judged him very wrongly. His wish was not to incur the displeasure of either Jehovah or Baal, and hence he honestly wished, at the time, to be nothing more than the guardian and executor of the laws.

In this calculation Buchanan had overlooked only one thing. Would the democracy fold their arms and allow him to carry out his laudable resolutions? And if they, with the same brutal shamelessness with which they, on the occasion of the first territorial election in Kansas, tore the principle of popular sovereignty to tatters, should oppose him and, despite all law and right, seek a practical decision in their favor, what would become of his virtuous intentions? He wanted to be neutral, but in the drawing up of his programme he did not go so far as to ask himself what side he would take if the slavocracy, by overt acts, forced him to become a partisan. But the programme he had drawn up for himself contained nothing to warrant the assumption that, with regard to this question, the unanimous opinion of his slavocratic friends and his republican opponents, on what was to be expected from him, would prove to be erroneous.

Buchanan, in the address referred to above, delivered to his neighbors after the happy result of the October elections, had given them the consoling assurance that this baleful episode had been brought to an end through the calm restored by Governor Geary and General Smith in Kansas.<sup>1</sup> Geary himself, in a letter of December 31, 1856, to Marcy, proudly claimed that, in proportion to its area and population, fewer crimes were committed in Kansas than in any other part of the Union.<sup>2</sup> One, however, would have to be more than an optimist if a nine days' earlier report of the secretary of state did not

<sup>1</sup> "We shall hear no more of bleeding Kansas. There will be no more shrieks for her unhappy destiny. The people of this fine country, protected from external violence and internal commotion, will decide the question of slavery for themselves, and then slide gracefully into the Union and become one of the sisters of our great confederacy." Curtis, *Life of J. Buchanan*, II, p. 176.

<sup>2</sup> Sen. Doc., 35th Congr., 1st Sess., vol. VI, No. 17, p. 101.

awaken the fear that the "happy state of things" which, according to the letter of the 31st, had reigned during the last three months in the territory, would not be lasting. The governor complained that there was still, in both parties, a minority who violently maligned him. While he was reproached by the one because, without regard for the constitution and the laws, he did not hasten the formation of a state government, he was slandered by the other because he would not consent to "a crusade in support of one idea"—the idea of slavery. If one read no further, one might certainly believe, from the expressions used by Geary,<sup>1</sup> that both groups were too small to occasion any serious anxiety. But, from the sentences that followed, it appeared that the latter ruled in the legislature, and that, therefore, their importance should not be measured solely by their numbers. Geary said he had to enter into the crusade obligation by his approval of the resolutions adopted by the legislature on the evening of its last session. These resolutions denounced the proposition "to organize a national democratic party," and declared that every man who did not make the slavery question the sole dividing line between parties was an ally of abolitionism and disunion.<sup>2</sup>

<sup>1</sup> "A few ultra men" and "a few violent men."

<sup>2</sup> "Whereas the signs of the times indicate that a measure is now on foot, fraught with more danger to the interests of the pro-slavery party and to the Union than any that has been agitated, to wit, the proposition to organize a national democratic party; and whereas some of our friends have already been misled by it; and whereas the result will be to divide the pro-slavery whigs from democrats, thus weakening our party one-half; and whereas we believe that on the success of our party depends the perpetuity of the Union; therefore

"Be it resolved by the house of representatives, the council concurring therein, that it is the duty of the pro-slavery party, the Union-loving men of Kansas territory, to know but one issue, slavery; and that any party making or attempting to make any other is and should be held as an ally of abolitionism and disunion." *Ibid.*, p. 94.

The report which informed the administration of these resolutions was furnished, scarcely two weeks later, with a very surprising commentary. At a party meeting which the members of the legislature held on the 4th of January, 1857, with the delegates of the counties, the leading men declared, in plain terms, that the pro-slavery party was only a small minority, and that, therefore, there was no hope of success, unless they united with the free-state democrats: that is, unless they renounced making Kansas a slave state, in order to be able to make it at least "a conservative democratic free state."<sup>1</sup>

The old leaders of the pro-slavery party who had made a name in the earlier history of the troubles of the territory, like Stringfellow, Dr. Tebbs, A. W. Jones and Whitfield, admitted the fact that the majority of the population would have nothing to do with slavery, and Bell, of Tennessee, subsequently stated in the senate that of the twenty pro-slavery newspapers in the territory nineteen were agreed that after January, 1857, there was no hope of bringing Kansas into the Union as a slave state.<sup>2</sup> As there were scarcely three hundred slaves in the territory, and that small number was continually diminishing;<sup>3</sup> and, as Walker in a letter of June 28, 1857, to Buchanan remarked, a considerable number of the immigrants from the slave states were, in their own interest, which they well understood, free-state people,<sup>4</sup> it

<sup>1</sup> Governor Walker to Cass, Dec. 15, 1857. Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 8, p. 122.

<sup>2</sup> Congr. Globe, 1st Sess. 35th Congr., App., pp. 136, 137.

<sup>3</sup> Walker, in the letter of December 15, 1857. Bell said in the speech of May 18, 1858, above referred to, that the number had shrunk in one year to one hundred, and according to some to fifty.

<sup>4</sup> A "very large majority of the squatters, who came to the territory from the slave states, are said to be for a free state, partly from conviction that their claims would bring a larger price, and partly be-

was, indeed, difficult to understand how any one could escape recognizing this fact, if he formed, and wanted to form, his opinions in good faith. But it was, none the less, very questionable whether all these facts warranted Walker's assertion that, long before his arrival in Kansas (May, 1857), the slavery question, as a practical question, had disappeared, and that its place had been taken by the question of self-government.<sup>1</sup>

In February, 1857, the legislature resolved to call a constitutional convention. Geary vetoed the bill because it contained no express provision that the convention should submit the constitution drafted by it to the people for adoption or rejection.<sup>2</sup> The legislature proceeded immediately to another vote, and the bill was adopted (February 19) by the necessary majority. There was no need of recalling the previous history of the territory to exclude all doubt as to whether the legislature refused to take into account the reasons of the governor or whether it intended to add another to numerous drastic illustrations of the "great principle," surpassing all previous ones in atrocity. The committees of both houses told Geary to his face that they in accord with their friends in the southern states had resolved to limit the co-operation of the people, in the work of giving Kansas a constitution, to the election of delegates to the convention.<sup>3</sup>

cause many of them came here expressly to settle in a free state. The same is the case, to a limited extent, with pro-slavery men holding town lots, shares and interests in the projected railroads." Rep. of Comm., 36th Congr., 1st Sess., vol. V, No. 648, p. 116.

<sup>1</sup> Walker, in the letter of December 15, 1857.

<sup>2</sup> See the veto message, Sen. Doc., 35th Congr., 1st Sess., vol. VI, No. 17, p. 167.

<sup>3</sup> Geary writes: "In a conference with the committees of the two houses, by whom the bill had been reported, I proposed to sign the bill, provided they would insert in it a section authorizing the sub-

The struggle for slavery, therefore, was not given up; on the contrary, it was announced in the most unambiguous manner that it would be continued, regardless of consequences, with the old means.

Seldom has a federal officer as honestly rejoiced as Geary did that, in accordance with the principle of "rotation in office," he had to look upon a change of administration as the natural end of his official life. On the 4th of March he handed in his resignation, and Buchanan chose Robert J. Walker to be his successor. The latter at first declined, but on the repeated request of the president accepted the post.

Walker was born and grew up in Pennsylvania, but when a young man of twenty-five years of age emigrated to Mississippi. Like most northerners who had removed permanently to the "sunny south," he became a decided partisan of slavery. If he had not been so, it is self-evident that his adopted state would not have sent him to the senate in 1836, nor Polk made him secretary of the treasury in 1845. His opinions on this fundamental question of the political life of the Union had undergone no change. He made no secret of his desire to see Kansas become a slave state.<sup>1</sup> But the southern

mission of the constitution as above indicated. But they distinctly informed me that the bill met the approbation of their friends in the south — that it was not their intention the constitution should ever be submitted to the people, and that to all intents and purposes it was like the laws of the Medes and Persians, and could not be altered." *Congr. Globe*, 1st Sess. 35th Congr., p. 546.

<sup>1</sup> "I should have preferred that a majority of the people of Kansas would have made it a slave state. . . . I never disguised my opinions upon this subject, and I especially reiterated the opinion that I was thus in favor of maintaining the equilibrium of the government by giving the south a majority in the senate, while the north would always necessarily have a majority in the house of representatives, which opinion I have entertained ever since the Mis-

radicals were, nevertheless, mistaken, if they supposed they had found in him a man entirely after their own heart. He had not sacrificed his political, and still less his private, conscience on the altar of slavery; and this the man had to do who, as governor of Kansas, wished so to manage their case that they might finally triumph. Walker accepted the nomination only after he had, in writing, made it a condition that the president and his cabinet would bind themselves honestly to carry out the principle of "popular sovereignty;" that is, "that the actual, *bona fide* residents of the territory of Kansas, by a fair and regular vote, unaffected by fraud or violence, must be permitted, in adopting their state constitution, to decide for themselves what shall be their institutions."<sup>1</sup> In the written instruction which the secretary of state sent Walker on the 30th of March, Buchanan, in due form, gave the pledge demanded. Cass declared in his name that the elections to the constitutional convention, the deliberations of the same, and the vote of the people on the constitution,<sup>2</sup> must and would be protected against fraud, violence and undue influence.

After Walker had shown, in this way, that he was resolved not to be the bailiff of the slavocracy, but to at-

souri compromise, avowing it at that time and on a great many public occasions ever since, especially in my efforts to make two slave states out of Florida, and six slave states out of Texas. This opinion I still entertain." Declarations made before the Corvode Committee. Rep. of Comm., 36th Cong., 1st Sess., vol. V, No. 648, p. 109.

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., p. 54.

<sup>2</sup> "When (not 'if' or 'in case') such a constitution shall be submitted to the people of the territory, they must be protected in the exercise of their right (!) to vote for or against the instrument (! 'the instrument' and not the slavery clause of the instrument), and the fair expression of the popular will must not be interrupted by fraud or violence." Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 8, p. 4.

tend to his office as an honorable man, and that he well knew the carrying out of his intention would meet with resistance, it was to be expected that he would proceed immediately to Kansas, in order to balk the people from whom this resistance was to be feared, before they could again create accomplished facts which might make his task much more difficult and perhaps impossible. But he took his time, as if there was not a cloud in the heavens, and his secretary, Fr. P. Stanton, had to carry on the government for him.<sup>1</sup> The recognition his subsequent conduct deserved has caused it to be too much overlooked that he had, by doing so, assumed no small part of the responsibility for the events that followed.

According to the law of February 19, only those were to have a right to vote at the elections to the constitutional convention who were residents of the territory on the 15th of March or previous to that date. By fixing the term thus early, not only the fresh emigrants from the distant free states were excluded from the suffrage but also the free-state people who had left the territory in consequence of the troubles of the previous year, and who now intended to return with the good season, since it seemed that life and limb were no longer at stake, if they did so. The Missourians, on the contrary, could easily come over, and be registered in the list of voters, then go home and quietly remain there until immediately before the election.<sup>2</sup> As bold an emigration from Missouri to Kansas as to the first elections could not be

<sup>1</sup> Even Stanton did not come to Kansas before the second half of April.

<sup>2</sup> Gihon, Geary's private secretary, writes: "But even that trouble was at length considered unnecessary, for the sheriffs and census takers found it more convenient to carry their books into Missouri and there record their names." *Congr. Globe*, 1st Sess. 35th Congr., p. 984.

started now, and hence this little trick alone could evidently not suffice to insure the slavocracy a favorable result at the polls. To bring this about, arduous labor was necessary, and the small but powerful band under the leadership of the general land-surveyor, John Calhoun, did not recoil before it.

The law of the 19th of February ordered a census of all the counties and the preparation of lists of voters, in accordance with which the apportionment of delegates to the convention should be made. The sheriffs and probate judges who were intrusted with this task were nominated by the legislature, and were, as Walker and Stanton agreed in stating publicly, decided adherents of the pro-slavery party. They were not satisfied, in drawing up the lists, with making advances, to the utmost, to the Missourians, and manifesting the greatest neglect and forgetfulness of the free-state people.<sup>1</sup> Under the pretext that they had not the necessary money, they took no census at all in nineteen out of thirty-four counties, and in fifteen at least they prepared no lists of voters.<sup>2</sup>

<sup>1</sup> The Kansas newspapers cited so many names of persons widely known, that there can be no doubt that there was good ground for these complaints. In one place the entire personnel of the free-state newspaper and, in another, even the host of one of the officers who had to prepare the lists, were forgotten.

<sup>2</sup> Some leaders of the pro-slavery party subsequently published a document in which they endeavored to deprive these facts of their significance, by alleging that in four counties the officials of the free-state people had been hindered by threats and violence, and that the "other fifteen were, for civil purposes, attached to organized counties," which they wanted to be understood to mean that the persons living in them and entitled to vote might have exercised their right of suffrage in other counties. (Congr. Globe, 1st Sess. 35th Congr., p. 386.) Stuart of Michigan said in the senate in relation to the same point: "If you can attach five or six counties to another for voting purposes, these counties, I presume, being twenty or twenty-

Walker could therefore say, as he did later, with the best of reason, that the convention had "vital defects," since cardinal conditions of the law to which it owed its existence had not been fulfilled.<sup>1</sup>

The free-state people had not yet given up their Topeka constitution, and were therefore inclined, from the start, to refuse to have anything to do with the Lecompton convention.<sup>2</sup> But now this seemed to them to be a dubious policy, and their most distinguished leaders, therefore, addressed a letter, on the 25th of April, to Stanton,<sup>3</sup> in which they offered to participate in the elections, provided they were allowed, in the manner specified by

four miles square, you may send a man a hundred miles to vote, and you might as well deprive him of the privilege entirely." (Ibid., p. 387). Besides this, Stanton said: "Nor could the people of these disfranchised counties vote in any adjacent county, as has been falsely suggested." (Ibid., p. 597.) That the complaints made against the free-state people were not altogether unfounded is all the more probable as they would have nothing to do with the convention, and, therefore, nothing to do with the measures introductory thereto. Stanton, too, says: "In some instances, people and officers were alike adverse to the proceedings." Sen. Doc., 35th Congr., 1st Sess., vol. I. No. 8, p. 115.

<sup>1</sup> "That convention had vital, not technical, defects in the very substance of its organization under the territorial law." Congr. Globe, 1st Sess. 35th Congr., p. 159.

<sup>2</sup> Platform of the free-state convention at Topeka of March 10, 1857. In an address to the people of the United States by the free-state convention we read: "We ask but that congress may adopt the Topeka constitution, which has already passed the house, or that both it and the one that will be adopted by the pro-slavery convention in September be returned to the people of the territory, with an enabling act providing for a fair and honest vote of the *bona fide* residents. We ask no more than this — we can ask no less." *N. Y. Tribune*, May 4, 1857.

<sup>3</sup> The letter is printed in full in the Congressional Globe, 1st Sess. 35th Congr., p. 1218.

them, to correct and complete the list of voters, and were granted an impartial electoral count. Their demands were so undoubtedly equitable and well-grounded that Stanton gave them reason to hope for a favorable answer. But the Calhoun party urged him so strongly to refuse their claims that the free-state people finally, instead of the justice promised, received a long-winded argument, on the grounds which forbade him to meddle in this matter. A month later the delegates were apportioned in accordance with the incomplete and fraudulent list of voters.

Walker finally came to Kansas at the same time. On the 27th of May he published an inaugural address which, as Douglas alleged, had been revised and corrected by the president himself.<sup>1</sup> He urgently exhorted the free-state people to desist from their intended abstention from the elections, since no matter how many or how few voted, according to the principles which obtained everywhere in the United States, the result would be binding on all, and what was now lost by their own fault could not be won again by a subsequent vote. The most important thing was not what the majority decided in favor of, but that the majority should decide. The question of self-government towered high above the question whether Kansas should be a free or a slave state, and, therefore, it would never be admitted into the Union as a free or a slave state unless the state constitution was adopted by a majority of the people, by a direct vote.<sup>2</sup>

<sup>1</sup> "Governor Walker read his inaugural address to me, as slightly modified by interlineations in the handwriting of the president of the United States himself." Cutts, *Treatise on constitutional and party questions* . . . as I received it from St. A. Douglas, p. 111. See the address, Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 8, p. 12.

<sup>2</sup> "And in no contingency will congress admit Kansas as a slave or as a free state, unless a majority of the people of Kansas shall first

On the 2d of June, he informed Cass the population demanded almost unanimously that the constitution should be submitted to a direct, popular vote, and assured him that "a most disastrous civil war would have been inevitable," if a promise were not given that this should be done.<sup>1</sup>

Matters, indeed, threatened to take a dangerous turn again, and it was to be feared now that the incentive thereto would come from the free-state party. The Topeka legislature was to meet on the 9th of June. Walker himself hastened thither. On the 8th he delivered a speech urgently exhorting the people not to be carried away by passion into a chase after shadows, and thus revive the old troubles in a worse form, while it needed only the honest carrying out of the law of congress in order to reach a decision in accord with the fundamental principles of republican-democratic self-government. A new legislature would be elected in October, and if the party then won, it would be entirely in its power to repeal the territorial laws which they objected to, and then before the close of the year the people, by voting on the constitution, would have to decide whether Kansas should be a free state or a slave state. The question: "Who elects the convention?" he answered evasively, saying that it mattered little who submitted the constitution to the people provided Kansas got no constitution which was not wanted by a majority of the people. The question: Whether he had the power to

have fairly and freely decided the question for themselves by a direct vote on the adoption of the constitution, excluding all fraud or violence." This declaration is repeated twice in a somewhat altered form but with the same emphasis.

<sup>1</sup>Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 8, p. 9.

compel this, he answered with the promise to unite with the free-state party in legal opposition, if the convention did not order a popular vote on the constitution.<sup>1</sup>

Walker's speech effected this much, that the motions of the radicals having in view the completion of the state organization and the adoption of state laws were defeated by a large majority. They were content with declaring that they held fast to what had already been resolved and done in the Topeka movement, and that a petition for the admission of the territory as a state, under the free-state constitution, should be again circulated.<sup>2</sup>

This moderation was certainly due in great part to their recognition of the fact that Walker could really do no more than he had promised to do. The advice of the radicals would, however, probably have been listened to more readily if it had not been so firmly believed that the convention would not dare to force a constitution on the people contrary to the promises of the president, made through the mouth of the governor and against the almost unanimous will of the population. And, indeed, that, in respect to this question, as Walker alleged, there was scarcely any difference of opinion among the population, was too evident to be contested. Not only was the policy announced in Walker's inaugural address approved by nearly all the newspapers of the territory, but Calhoun and seven other pro-slavery candidates for the convention considered it necessary, on the 13th of June, to publish a letter in which, referring to a resolution of the democratic party convention, they repelled the "slander"

<sup>1</sup> See the report in the *Topeka Statesman* of June 9, 1857, on the speech in the Congr. Globe, 1st Sess. 35th Congr., p. 1335.

<sup>2</sup> Walker's report of July 15 to Cass. Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 8, p. 27.

that they were opposed to a popular vote on the constitution.<sup>1</sup>

Two days later the elections to the convention were held. While the census lists, which embraced only nineteen out of thirty-four counties, enumerated nine thousand two hundred and fifty-one persons entitled to vote, only two thousand two hundred, that is, fewer than one-fourth, took part in the election.<sup>2</sup> The free-state party had, therefore, remained true to their word as originally given, to abstain from voting; only a part of the free-state democrats, who were zealously defended by the *New York Times*, had gone to the polls. The successful pro-slavery or "regular" democratic candidates received about one thousand eight hundred votes.<sup>3</sup> This figure furnished overwhelming evidence as to the manœuvre resorted to by the pro-slavery party in previous elections. In March, 1855, they would have it appear that they had cast six thousand three hundred votes, and now, in spite of the notorious doubling or trebling of the population<sup>4</sup> entitled to vote, they could bring out a vote of only one thousand eight hundred<sup>5</sup> in an election of such importance. This, however, proved not only that they had been previously guilty of gigantic election

<sup>1</sup> See the letter and resolutions, *Congr. Globe*, 1st Sess. 35th Congr., p. 54.

<sup>2</sup> Stanton's message of Dec. 8, 1857. *Sen. Doc.*, 35th Congr., 1st Sess., vol. I, No. 8, p. 115.

<sup>3</sup> *Loc. cit.*

<sup>4</sup> In a letter of "Pemaquid," correspondent of the *N. Y. Tribune*, of July 11, 1857, we even read: "It is known to all that at least three-fourths of the actual resident population of Kansas have gone thither since the riots of March 30, 1855. If there was then a pro-slavery vote of six thousand three hundred, there ought to be one now of twenty-five thousand."

<sup>5</sup> Walker says: "Scarcely more than one-tenth of the present voters of Kansas." *Congr. Globe*, 1st Sess. 35th Congr., p. 159.

frauds, but also that they could attain their end only on condition that they operated with still greater harshness and criminality. They were able, indeed, owing to the abstention of the free-state party from voting, to draft a constitution in accordance with their own wishes, as unhindered as if there were no one in the territory who thought otherwise than they; but, when they submitted their work to the people, its rejection by an overwhelming majority was beyond a doubt. Their victory, therefore, of the 15th of June established the fact that they would be ignominiously defeated if Buchanan's and Walker's promises were fulfilled.

No one was surprised at this result. People in the south had long been just as well informed as those in the north how matters stood in Kansas. Hence the radical slavocracy had not awaited the issue of the election. Even before the election the underground warfare against the new right obtained by surprise three years before, was raging hotly — against the new right, not perhaps as Douglas wanted it to be understood, but as the south itself had interpreted it. As it was unquestionable that the majority of the population of Kansas did not want slavery, they were not allowed in organizing the state out of the territory, any more than in the question of the duration of the territorial condition, to exercise the right of self-determination. Scarcely had Walker's inaugural address been given to the country than it was seen with what justice the territorial legislature had appealed in their negotiations with Geary on the law of February 19, to the wishes and the will of their "southern friends." Walker was not only violently denounced by the press, but the democratic state conventions of Georgia and of his own adopted state, Mississippi, made a savage attack on him. The former commented on their condemnation

of the promise that the constitution would be submitted to a direct popular vote, by making the further charge that Walker had pointed out the way in which Kansas might become a free state.

Thus Buchanan, three months after his inauguration, was rudely awakened out of the pleasant dream that, even before the meeting of congress, by simply letting things take their course, the Kansas question would be solved, and that the whole slavery question would be allowed to assume for a long period of time the character of an unadjustable conflict of material interests. The projected neutrality accompanied by a conscientious execution of the laws, according to their spirit as well as their letter, meant the defeat of the slave-holding interest, and the radical slavocracy declared with wonted frankness that their interests alone would govern their action. Buchanan must have wanted to deceive himself, if he did not see that nothing had been gained even by the unconditional recognition of his doctrines through the Dred Scott decision, since the radical slavocracy had it followed immediately, in this way, by the announcement that they had no use for the "great principle" of popular sovereignty, even when thus explained, but that of a little cloak of lies. They forced him to resume the battle, and his freedom of choice was limited to deciding whether he would wage it with them and for them or against them. If he decided for them, he was of course to be allowed the use of the little mantle of lies. There it lay ready-made, and was neither shorter nor more transparent than the one Douglas had wrapped about the Kansas-Nebraska bill or Taney the Dred Scott decision. To take the initiative in favor of the slave-holding interest was not asked nor even desired of him at the time. All he was asked to do was to substitute absolute passiv-

ity for his intended neutrality; that is, not to oppose, even by words, the action of the Lecompton convention if it treated the right of the people, guarantied by the Kansas-Nebraska bill and recognized by the Dred Scott decision, of self-determination in organizing the state, as exhausted by the election of a constitutional convention.

The Washington *Union* of July 7 published an article which was construed to mean that the administration decidedly refused to comply with this desire. When, however, it was examined more closely the doubt could not but suggest itself whether the refusal was to be as decided and unconditional as might appear from the first impression. A direct, popular vote on the constitution, the article said, was certainly not, under all circumstances, an absolute requirement. If no great differences of opinion existed, either in the convention or among the population, it might properly be dispensed with, as has frequently been done without objection. But the previous history of Kansas showed that there, there was no other means to surely ascertain the will of the people. No matter what the constitution might contain, it would always be called a fraud by its opponents, if not approved directly by the people. It would be asked what reason the convention could have had for refusing the popular vote asked for, except the conviction that its work did not meet the will of the people, and this it would be difficult to answer. The controversy would be continued and the will of the majority finally prevail.

If the *Union* had stopped here, the article would have met with the entire approval of all who honestly desired the settlement of the controversy on the basis of the principle of popular sovereignty. But the organ of the administration raised the further question, Who was the people, that is, what conditions had to be fulfilled to

have the right of suffrage at the popular voting on the constitution, and its answer was that this was to be determined by the constitutional convention. This may have been quite right theoretically, although, to say the least, it might be a matter for discussion whether it was not rather congress that should determine it, when there was question of transforming a territory into a state. But, in this particular case, it was perhaps expedient to leave that undecided, since the territorial legislature had ordered the elections to a constitutional convention, not by virtue of an enabling act, but *proprio motu*, and congress reserved full liberty to decide whether, and for what reasons, it would refuse its sanction to the whole proceeding. But the history of Kansas was verily rich enough in examples to show that the settlement of such questions could be most effectually abused in the interest of party, and that a repetition of such foul practices was not to be apprehended of this convention would have been, considering the history of its origin and its composition, an altogether too bold assumption. Must that history and composition not rather awaken the suspicion that the *Union* wanted to give a friendly hint to the convention as to how, without too gross a disregard of the principle of popular sovereignty, still to do a great deal in the interest of the slavocracy? This suspicion could be allayed all the less by making a show of moral indignation, as the sentence on the right of suffrage in Buchanan's inaugural address sounded very differently.<sup>1</sup> And if a hint were not intended, it was still to be expected that the passage in the

<sup>1</sup> It is the imperative and indispensable duty (!) of the government of the United States to secure to every resident inhabitant (!) the free and independent expression of his opinion by his vote. This sacred right of each individual (!) must be preserved. *Statesman's Man.*, III, p. 2222.

article in the *Union* would be looked upon as one, and this not by the atrabilious republicans only. But if it was considered such a hint in Lecompton and in the slavocratic camp in general, the further question readily suggested itself, whether the declaration that a popular vote was not necessary under all circumstances, might not be made use of as a back door through which the president, by the employment of proper pressure, might be forced out of the rest of his virtuous reasoning.

If a document emanating directly from the president but which saw the light only subsequently became known now, such interpretation of the *Union* article would have been excluded, and the course of events perhaps greatly modified, since it might have been represented to the president in time, *i. e.*, before his disgraceful and fatal change of front had become an accomplished fact, that he had, so to speak, nailed himself fast. He wrote to Walker on the 12th of July, exhorting him not to allow himself to be forced from the programme drawn up, since on that ground he was "irresistible," and announcing his own resolve to "stand or fall" with the demand that the constitution should be submitted to a vote of the people.<sup>1</sup>

<sup>1</sup> "The point on which your and our success depends is the submission of the constitution to the people of Kansas. . . . On the question of submitting the constitution to the *bona fide* resident settlers of Kansas, I am willing to stand or fall. In sustaining such a principle we cannot fall. It is the principle of the Kansas-Nebraska bill; the principle of popular sovereignty, and the principle at the foundation of all popular government. . . . Should you answer the resolution of the latter (Mississippi), I would advise you to make the great principle of the submission of the constitution to the *bona fide* residents of Kansas conspicuously prominent. On this you will be irresistible." Rep. of Comm., 36th Congr., 1st Sess., vol. V, No. 648, pp. 112, 113.

It by no means required any extraordinary courage to remain true to this resolve. There was still enough honor left in the slavocratic camp to approve it without reserve. Thus, for instance, in an article in the Richmond *Examiner*, of the 14th of July, the schemes of the "Ultras" were branded in terms as scathing as the most radical of republicans could have employed.<sup>1</sup> Besides, the reports of Walker from Kansas were very satisfactory so far as this question was concerned. The governor was not without anxiety, but it was in the new "revolutionary" movements of the free-state people that he saw reason for serious apprehension. It seemed to him that Lane's agitation for a certain military organization of the party and the intention of the citizens of Lawrence to constitute themselves a state under the Topeka constitution, by dint of obstinacy, might again lead to deeds of violence at any moment. He was, therefore, not satisfied with

<sup>1</sup> "A paltry fraud, a political juggle, a legal swindle, upon the people of Kansas — insisted upon, demanded, clamored for, by 'the chivalry,' par excellence, by the pink and pick politicians of the south!

" 'Our tools in the convention will frame a constitution for Kansas;' 'it will be such as the people would repudiate;' 'we will take care to prevent the people from voting upon it; we will juggle it through with a show of mock formalities;' and 'we will accomplish by chicane what we could not have accomplished by straightforward, honest, democratic practice.' Such is the position of the peculiar champions of the south; such the attitude in which they are striving to place the south before the Union and before the world; such the humiliating depths of dishonor — with faith violated, pledges broken, and reputation blasted — in which they would sink the noble democracy of the slaveholding states. The fraud is infamous enough in itself, but it is doubly so in being in violation of express pledges given by the democracy of the Union, and participated in, in the most solemn manner, by the ultras themselves." The Washington *Union* had the boldness to give its commentary of the 18th of July the following heading: "Will the south countenance the fraud?"

an express warning, in his proclamation of July 15 to the citizens of Lawrence, but he asked the president, in accordance with the obligation entered into with him, in the negotiations above referred to, to place at his disposal a sufficient number of troops, as a *posse comitatus*. The troops which on account of the Mormon troubles were to have marched to Utah, were, therefore, left in the territory, and the free-state people gave no occasion for an appeal again to powder and lead, while the matter of the constitution was, in Walker's opinion, proceeding most satisfactorily. That in the democratic convention of July 3, in Leecompton, no one had alleged the possibility of making Kansas a domain of slavery, he thought he might construe to mean that it was universally recognized as impossible that Kansas could be made a slave state "in consequence of the laws of climate and the well known will of the people."<sup>1</sup> And on the 15th of July he reported to Cass that frequent conversations with the majority of the delegates to the convention made the adoption of a constitution patterned after those of different slave states seem to him highly probable: security of the right of property in slaves who were such at the time, prohibition of the further importation of slaves, complete exclusion of all free persons of color, and the strictest execution of the fugitive slave law. At a popular vote such a constitution would probably be adopted by a large majority, as free-state democrats and the pro-slavery party could unite on that platform: "Indeed, it is universally admitted here that the only real question is this: Whether Kansas shall be a conservative, constitutional, democratic and ultimately free state, or whether it shall be a republican and abolition state."

In his letter of July 12 already mentioned, Buchanan

<sup>1</sup> Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 8, p. 132.

had stated that, in his opinion also, salvation could be hoped for only from a union of the pro-slavery party with the free-state democrats; that is, in other words, that the south had to be satisfied with what the free-state democrats were ready to grant it. Walker, now, on the 20th of July, wrote that the violent attacks of the slavocratic "ultras" upon himself and his policy on the constitutional question had already given such offense to so many free-state democrats that they would, presumably, spite of all representations, go hand in hand with the republicans.<sup>1</sup> If Buchanan still wished to remain true to his programme hitherto, this news, which made the fulfillment of the hopes awakened by the report of the 15th, must induce him ostentatiously and strongly to back his governor against the slavocratic whippers-in, in order that the free-state democrats might not be driven entirely into the arms of the republicans. But nothing occurred from which such an intention could be inferred. On the other hand, he made use of an opportunity which accidentally presented itself to express himself on the Kansas question, in a manner which must have dampened the expectation, encouraged perhaps here and there by his previous attitude, that he would stand out against the rage of the slavocracy.

Some clergymen from Connecticut had addressed a memorial to the president on his Kansas policy. His answer<sup>2</sup> of the 15th of August contained, indeed, the statement that, on the transformation of the territory into a state, the people had the right to decide the slavery question by voting on the constitution; but as to the rest

<sup>1</sup> Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 8, pp. 30, 31.

<sup>2</sup> Printed in the *N. Y. Tribune* of Sept. 4, 1847. See also in the *Independent* of Oct. 1, 1857, the memorial of the clergymen and their exhaustive refutation of Buchanan's sophistical reasoning.

of it, even Calhoun himself, according to Brown of Mississippi, could not have written anything more acceptable to the slave barons. The election law relating to the constitutional convention was called equitable and just because it recognized the right of all *bona fide* inhabitants to vote, and had, at the same time, by the three months' limitation above mentioned, guarded against fraud and the intrusion of citizens from neighboring as well as remote states. A refutation of the reasons which rendered these provisions inequitable and unjust in the eyes of the opposition was not attempted;—to prove the more than strange assertion, that an intrusion from remote states was possible in the same sense as from neighboring Missouri, nothing was said;—on the manner in which the provisions of the law relating to the taking of the census and the drawing up of the list of voters were carried out, a discreet silence was observed. The free-state people, on the other hand, were again, *sub rosa*, described as rebels. If their rebellion was yet in its first stage, still the announcement was thought necessary that it was the imperative duty of the president to protect the convention by federal troops from violence, as if the intention to overwhelm it could not be doubted. Leaving this last insinuation out of consideration, it must have seemed an altogether unwarranted piece of mildness to speak only of a state of "incipient rebellion," because slavery, as the supreme court finally decided, had always existed and still existed in Kansas "under the constitution of the United States." "How it could ever have been seriously doubted is a mystery." But it will always remain a still greater mystery how Buchanan could write this sentence and allow it to be published to the country, since he must have known that the documentary proof of the fact, that he had thereby exposed

his own capacity of judging on constitutional matters to an unexampled *testimonium paupertatis*, could not only be produced at any moment but would unquestionably be produced by numberless newspapers and orators. Many a beardless youth could remember the time when he declared the legislative competency of congress in respect to slavery in the territories to be undoubted as emphatically as he had done so since the beginning of his political career;<sup>1</sup> and in the defense of himself which he published after the civil war, he again severely condemned the repeal of the Missouri compromise. It has, however, never been denied that he was at this time as accountable as a man, as a politician and a jurist as at any other period of his life; and this sentence, therefore, was an aspersion of himself as severe as can well be imagined.

The New York democratic state convention passed a very different judgment. In its resolutions, the reply to the Connecticut clergymen was styled "an admirable letter."<sup>2</sup> But, even from this point of view, it could not be denied that the letter betrayed an anxious and ardent desire to obtain the favor of the southern radicals. That the new artifices of their representative were to be traced directly to that desire must not, indeed, be assumed, and certainly cannot be proved. But if it must be admitted as probable that these artifices would, under any circumstances, have been resorted to, we must say, on the other hand, that these people must have undergone a really wonderful metamorphosis for the better, not to allow

<sup>1</sup>In the letter frequently quoted of August 21, 1848, to Sandford, he says: "Having urged the adoption of the Missouri compromise, the inference is irresistible that congress, in my opinion, possesses the power to legislate upon the subject of slavery in the territories."

<sup>2</sup>N. Y. *Tribune*, Sept. 14, 1857.

themselves to determine to reconsider their resolution in consequence of this prostration of the president at the feet of the slavocracy, if they had wished to desist from continuing the struggle because entirely without prospect of success.

The Lecompton convention met on the 1st of September only to adjourn until after the October elections.<sup>1</sup> That they did not adjourn merely that they might be able to take the will of the people, as expressed in the elections to the legislature, as their instructions, to some extent, in their work on the constitution, and turn it to account in that work, but mainly to make it possible for the members to devote their time and their various talents entirely to the interest of the party, before and during the election, was soon seen to be only too certain.

For some time the republicans had been divided in opinion on the question whether the free-soilers had acted not only constitutionally and morally right but also wisely, in a political sense, in drawing, for so long a time and with rigid consistency, all logical consequences from the illegal origin of the territorial legislature, instead of preserving the principle by a protest and placing themselves on the ground of facts, because now the formal legality of the actual situation created by the illegalities of their opponents had also grown to be an undeniable fact. Their opponents had indubitably long been very clear on this point, although their interest forbade the frank expression of their views. The mode of warfare of the opposition had on the one hand left them free to continue building on the foundation laid by their deeds of violence, and, on the other, had given their posing as the defenders of the supremacy of law and order,

<sup>1</sup> Douglas's Minority Report of February 18, 1858. Sen. Rep., 35th Congr., 1st Sess., vol. I, No. 82, p. 70.

which at first bore so unmistakably the stamp of the boldest mendacity, the appearance of truth; and this the more the longer it lasted. Now, at last, Walker's assurances induced the free-soil people to resolve to come to terms with the principle for the moment, at least, with words, but to maintain the actual struggle on the field of their opponents. Considering the notorious numerical proportions of the parties, this resolution, in and of itself, completely changed the situation. The pro-slavery party was thus deprived of the two props with which the free-soilers had supplied it by their policy of absolute fidelity to principle, and they immediately showed how perfectly they were conscious that these props had become the corner-pillars of their supremacy over the territory. If Kansas were not admitted into the Union as a state under the Lecompton constitution, the new territorial legislature might repeal all the laws passed by its predecessors, and all the vile deeds and crimes since those days in March, 1855, would have been committed in vain; and if the election of a free-soil legislature were allowed to follow on the heels of the adoption of a slavery constitution without a popular vote, all the sophists of the world could adduce nothing in answer to the charge that slavery had been forced upon the people against their will. The victory of June was, therefore, worse than useless if it were to be followed in October by a defeat; for if the convention, spite of such defeat, drew the inferences it intended to draw from that victory, the pro-slavery party would thereby brand itself on the forehead with its own hand. Walker had merited to be more ardently hated by them than the Lanes, Robinsons, etc., for he had hewn down the branch on which they sat, by bringing it to pass that the free-soil people resolved to take part in the October elections. Any idea of victory,

in an honest struggle, was excluded; and sharp practice, which would of course be resorted to,<sup>1</sup> would avail nothing. To strike their colors or return to the policy of election frauds of the glorious "law and order" days, with an energy utterly regardless of consequences — they had no other choice.

Owing to a defect in the laws of the territory — we must here leave it undecided whether the defect was intentional or not — election frauds could be perpetrated with perfect safety to any extent desired. Penalties were indeed attached to illegal or fraudulent voting, but there was no provision that made the drawing up of fraudulent lists of voters punishable.<sup>2</sup> There was no need, therefore, of troubling the Missourians; the same end could be attained, much more easily, much more cheaply, without any unpleasant altercations, brawls or frays in the places of election, and without any danger whatever, by writing fictitious names on the necessary quantity of paper; and this was now done. Johnson county, on the border, was joined to the densely populated county of Douglas, and provided with a disproportionate representation in the legislature.<sup>3</sup> In the Oxford district of this

<sup>1</sup> Stanton says, in the memorial referred to, "To the People of the United States:" "When . . . it had become apparent that the mass of the people were prepared and determined to participate in the October elections, the minority endeavored to defeat the result by reviving the tax qualification for electors, which had been repealed by the previous legislature. Opinions were obtained from high legal sources, the effect of which, had they prevailed, would have been to exclude the mass of the people from voting, to retain the control in the hands of the minority, and, as a consequence, to keep up agitation, and to render civil war inevitable."

<sup>2</sup> Stanton's message of Dec. 8, 1857. Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 8, p. 119.

<sup>3</sup> Stanton says in the memorial of January 29, 1858: "with a large and controlling representation in the legislature. The cele-

electoral circuit and in three districts of McGee county, the pen repaired the damage done by the votes of the population in the rest of the territory. Here the conspirators summed up a vote of twelve hundred, although not quite a hundred persons had the right of suffrage,<sup>1</sup> and there they prepared a list, fifty-four feet long, of sixteen hundred names, all of which but one hundred and twenty were copied exactly in alphabetical order from an old Cincinnati directory.<sup>2</sup>

Even in the United States, where everything has a tendency to assume gigantic proportions, nothing of the like had ever occurred before. This fact may have given some satisfaction to the forgers, and they might try to console themselves by it as best they could, for as to the rest they had wasted time, ink and paper, since Walker felt called upon to continue to play his part and spoil the game. Neither abuse nor threats could move him to restore to its place of honor an ancient Cincinnati directory, made waste paper of through age, by transforming it into a poll-list of the Oxford district of Kansas. Even a writ of *mandamus* issued by Judge Cato did not change his mind.<sup>3</sup> Thanks to his honest and manly redemption of the word he had pledged to the free-soil people, the latter obtained a large majority<sup>4</sup> in both houses of the legislature, and their delegate to congress was elected by a majority of about five thousand votes.

Walker publicly and officially expressed the opinion  
brated Oxford fraud was perpetrated with a view to obtain majorities in both houses of the assembly."

<sup>1</sup> The *Independent*, Nov. 5, 1857.

<sup>2</sup> The *Independent*, Nov. 12, 1857.

<sup>3</sup> Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 8, pp. 106-109.

<sup>4</sup> In the council nine against four, and in the house of representatives twenty-seven against twelve. The *Independent* of Oct. 29, 1857, after the *Chicago Tribune*.

that a victory obtained by sanctioning such monstrous frauds of the pro-slavery party would have been more disastrous than the worst defeat.<sup>1</sup> If he had been a better adept in the art of reducing the ballast of civic morality in his political bark to a minimum, he would have seen that the victory could have been secured without sanctioning the frauds. The Richmond *Enquirer* condemned these just as emphatically as he did,<sup>2</sup> but claimed at the same time, with Judge Cato, that the certificates of election should have been given to the persons elected, in accordance with the fraudulent poll-lists, because the territorial laws made the legislature, and not the governor, the judge of the legality of the elections. This, in itself, was entirely correct; but, on the other hand, it was undoubted that a party which had not recoiled from these manœuvres, if it were allowed by means of such poll-lists to get a majority in the legislature, only for the first twenty-four hours, would never deprive itself of a majority by an examination of election certificates. The formal law would again have served only to set atrocious force in motion, in such a way that it would become permanently and legally binding. Walker had undoubtedly assumed a power which the law did not give him, but he thereby prevented an unparalleled piece of knavery becoming again a foundation on which a new citadel of criminal force might be erected out of formal law — a citadel against which, according to the doctrine preached for years in Washington by those in power and carried

<sup>1</sup> See his proclamations of October 19 and October 22, 1857. Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 8, pp. 101-106.

<sup>2</sup> "The nature and character of these frauds are such as preclude the possibility of defense and extenuation. There is no defense for the proceedings at Oxford, and no power on earth can induce us to extenuate that monstrous transaction." Printed in the *N. Y. Tribune* of Nov. 9, 1857.

out by armed force, not a finger could be lifted without becoming guilty of rebellion.

The history of Kansas's sorrows thus far made this so clear that the most stupid town politician needed no explanation to enable him to understand it. But the president who had lulled himself into the delusion that he could drive the Kansas question out of the world until congress met, by the impartial execution of the laws, placed himself entirely at the point of view of Judge Cato, on which Pierce, too, had stood from the first. The motto of the White House was still not: *fiat justitia, ruat cælum*, but: woe to the hand that touches the letter of the law conceived in violence and fraud and born of artifice and deceit, no matter how completely justice, through its rule, may be crushed by the falling heavens. Some journals even betrayed, in the unwise zeal with which they defended Buchanan, that he had foreseen what had happened, and had expressly instructed Walker not to think of going beyond the letter of the law in the interests of justice.<sup>1</sup> The governor's guilt was, therefore, double; for he had, contrary to express orders, become guilty of an act of usurpation, by means of which he deprived the proslavery party of the fruit of its infamous acts. Hence, for a time, the rumor was widely believed that his removal had been decided upon and would soon take place.

<sup>1</sup> The Richmond *Enquirer* was written on the 2d of November from Washington: "President Buchanan most unequivocally condemns the action of Governor Walker touching the Kansas elections. . . . I feel assured Walker's actions will be pronounced an error, and he will be reprimanded for falling into it in direct violation of his instruction of September 8, in which he is especially charged to leave all questions of fraud to the legislature, where it properly belonged.

"The president regrets this blunder the more, as it places the southern members of his cabinet in an unpleasant position, and is likely to re-open the Kansas question throughout the south. Mr.

The press friendly to the administration immediately met this rumor with the assurance that the president, notwithstanding the gravity of the offense, would exercise consideration, partly because it was the first fault

Buchanan is surprised that Governor Walker should have fallen into such an error, as his instructions were too plain to be misunderstood, and were prepared to meet precisely the state of the case which occurred." N. Y. *Herald* and *The Star*. (See Congr. Globe, 1st Sess. 35th Congr., N. Y. *Herald* and *The Star*.) All three journals denied that Walker's removal was intended. The instructions of September 8 were not to be found in the documents transmitted to congress.

Our information concerning the secret history of the Kansas question has recently — a considerable time after this chapter had been completed in manuscript — received a valuable addition by the publication of a letter of Buchanan dated October 22, 1857, that is, on the day of Walker's proclamation referred to, addressed to the governor in relation to the elections. (Nicolay and Hay, Abraham Lincoln: A History. The Century Magazine, July, 1897, pp. 377, 378.) The president expresses his satisfaction that the Lecompton convention, as Walker had informed him, would submit the constitution to a vote of the people. "This," as well as "that the late election passed off so peacefully," induce him to believe that "we may now fairly anticipate a happy conclusion to all the difficulties in that territory." He then declares Walker's complaint about the attitude of Harris, editor of the *Union*, unfounded, but admits that the latter does not acquiesce in his request to send him an article, by which Walker felt specially aggrieved. Harris was not responsible, he said, for the non-publication of the letter sent by Walker of Dr. Tebbs and General Whitfield, in which the latter admit that Kansas was lost beyond recovery to slavery. "I knew nothing of them until after the receipt of yours(!); and upon inquiry I found their publication had been prevented by Mr. Cobb(!) under a firm conviction that they would injure both yourself and the administration. Whether he judged wisely or not I cannot say, for I never saw them. That he acted in fairness(!) and friendship I have no doubt." In connection with this letter, Nicolay and Hay recall that, according to Walker's testimony before the Covode committee, Calhoun assured him that the administration had changed its policy, and that he tried by the bait of the presidency to induce him to change with him. The inference they draw from these facts is as follows: "The conclusion

Walker had committed, under such exceedingly difficult circumstances, partly because he would certainly see it, frankly acknowledge it, and, to the extent of his power, make amends for it. He was, therefore, left in office, but whether for the reasons just given must seem highly doubtful. Much more probable was the supposition that the White House calculated thus: his removal cannot undo what has been done; besides, it would be looked upon by the enemy, and more or less successfully, as an open siding with the forgers; it could, therefore, not help and must injure. The game with the accomplished facts which could not be gotten over had been played long enough for the participants to understand thoroughly that they were not going to allow themselves to be misled by vexation into the mistake of knocking down the wall with their heads. Great as was the rage of the slavocratic radicals, nothing could be done for them at the moment. Nothing was left for them but to await what the Lecompton convention would and could do for them, not only without the support of a similarly-minded but against a hostile legislature.

Many of their partisans in the territory evidently considered their cause irretrievably lost. Of the sixty members of the Lecompton convention only forty-three put in an appearance; of these frequently only a few over thirty were present, and it was notorious that sessions were held without a quorum. The slavery question was

is almost forced upon us that a cabinet intrigue, of which the president was kept in ignorance, was being carried on, under the very eyes of Mr. Buchanan, by those whom he himself significantly calls 'the extremists,'— a plot to supersede his own intentions and make him falsify his own declarations. As in the case of similar intrigues by the same agents a few years later, he had neither the wit to perceive nor the will to resist."

decided by only twenty-eight votes, and the question of the popular vote was carried by only the miserable majority of two votes. One did not need a very lively imagination, nor very great party animosity, for this convention, with its body-guard of federal troops, to impress him as a light-shunning conventicle of conspirators. During its last days no journal was kept, or, at least, none could be found.<sup>1</sup>

On the 7th of November the convention was done with its work. That work corresponded perfectly with what was to be expected from the first two steps it had taken, namely, the election of John Calhoun as president, and of Hand, one of the manufacturers of the Oxford poll-list, as secretary. What the party had lost by the pusillanimity of one part of its members the others had, by redoubled audacity and tenfold craft, endeavored to make up. The border counties were accorded an undue weight in the legislature, from the fact that the fraudulent poll-lists were made the basis of representation. That the way was paved as smooth as possible, by all sorts of provisions, for the Missourians to intrude themselves at future elections need only be mentioned in passing. The free-soil legislature elected in October was completely crippled by the provision that "all laws now in force in

<sup>1</sup> The facts recited are all taken from the Minority Report of J. S. Morrill, Ed. Wade, H. Bennett, D. S. Walbridge and J. Ruffinton. Rep. of the Select Comm. of Fifteen, May 11, 1858. Rep. of Comm., 35th Congr., 1st Sess., vol. III, No. 377, p. 109.—The *Boston Traveler* was written from Lawrence on the 9th of November: "When the constitution was adopted as a whole, only twenty-seven votes were cast for it, and nine against it. It was with difficulty that a quorum could be secured to sign it, and but thirty-two names were appended to the instrument. A convention elected by a miserable minority and a constitution voted for on its final passage by a minority of the convention!"

the territory shall continue to be of force until altered, amended or repealed by a legislature under the provisions of this constitution." The hands of the governor were tied by transferring the direction of the election and the examination of the polling-lists entirely to the president of the convention.<sup>1</sup> The officers of election were not required to take the usual oath to discharge the duties of their office conscientiously. The material provision respecting slavery was, *verbatim*, as follows: "The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and his increase is the same and as inviolable as the right of any property whatever. The legislature shall have no power to pass laws for the emancipation of slaves without the consent of the owners, or without paying the owners, previous to their emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to the state from bringing with them such persons as are deemed slaves by the laws of any one of the United States or territories, so long as any person of the same age or description shall be continued in slavery by the laws of this state." Verily, there lacked but little here to transform the provision which, until the discovery of the "great principle" of the Kansas-Nebraska bill, had governed in this matter, into its direct opposite: The abolition of slavery and of involuntary servitude is forever prohibited.

The crowning of the work was the resolutions respect-

<sup>1</sup> The *Independent* scarcely exaggerated when it wrote (November 19, 1857): "It (the convention) actually constituted a provisional government for Kansas, whereof its president, United States Surveyor-General John Calhoun, is made governor." Somewhat more detailed data regarding Calhoun's powers may be found in *Congr. Globe*, 1st Sess. 35th Congr., p. 161

ing the popular vote. The convention had decided in favor of a popular vote. The Washington *Union* of November 18 broke out into enthusiastic jubilation over this news. The problem, it exclaimed, is solved in accordance with the great principle of the Kansas-Nebraska bill, and the republicans who live by the eternalization of the troubles in Kansas are ruined.<sup>1</sup>

This must have had a startling effect on those even who despised Buchanan the politician too much to be able to hate him. The man who could have caused that to be written had no right to complain if the question was asked whether he could be taken seriously.

The *Union* stated that the "constitution" would be submitted to a popular vote. That was simply a lie, and the organ of the administration lied, fully conscious that it was lying. The voting formula read: "Constitution with slavery" or "Constitution with no slavery." Hence, so far as the *constitution* was concerned, no choice was left to the people; the people had to vote for it; that is, it was forced on the people by the convention; only with respect to slavery — *so far as could be discovered from the voting formula* — was the decision to rest with the people. But the constitution, quite independently of slavery, gave occasion for very many and very weighty

<sup>1</sup> "The vexed question is settled — the problem is solved — the dead point of danger is passed — all serious trouble about Kansas affairs is over and gone. Another star is added to the republican constellation, not shining on scenes of terror, conflagration and blood, but lending its light to the peaceful pursuits of a contented and prosperous people. . . . This news, so full of hope to every American patriot, will bring sorrow only to one class of our people. The black republican politicians had all their capital staked on the chances of disorder and confusion in Kansas. The enterprise has failed, and they are ruined. The peace of the country, the prosperity of the people, and the safety of the Union is destruction to their hope."

objections, and the principle of the Kansas-Nebraska bill was not popular sovereignty only in regard to slavery, but popular sovereignty absolutely, that is, in regard to all institutions, and in accordance with this, not only Walker but Buchanan as well had promised to use all his influence to have the constitution submitted to a popular vote. If, therefore, he now approved the resolution of the convention without reserve, he became guilty of a breach of word, and made matters worse by the hypocritical untruth that his word had been fully redeemed by the convention. That the latter endeavored to have people believe that this had, indeed, been done, did not, of course, diminish his guilt.

This, however, was, so to speak, only the introduction to the gigantic fraud which the convention had hatched, and which the organ of the administration celebrated with such hymns of praise. The voting formula itself was a contemptible lie. The "constitution with no slavery" was a deceitful mockery; the people had to choose between two slavery constitutions, for the "constitution with no slavery" provided that the slavery existing in the territory should not be touched. In one respect it was even worse than the "constitution with slavery." The latter contained provisions on the right of owners to emancipate their slaves, and these provisions were voted out of existence by the formula "constitution with no slavery." What the people were allowed to do was limited to prohibiting the further introduction of slavery; but they had to make Kansas a slave state. The convention had endeavored to veil this under a false formula; but defiant recklessness had, through their success hitherto, become the nature of the slavocracy to too great a degree for them not to be able to find people enough to announce it immediately loudly and triumphantly to the

world. On the very day on which the convention completed its labors the real state of the case was clearly exposed in a letter from Lecompton to the Jackson *Mississippian*, with the most audacious frankness.<sup>1</sup> Nor did the correspondent forget to call attention to the fact that, to participation in the popular vote, the condition was attached that the voter should bind himself by oath to support the federal constitution and *this state constitution* — a really ingenious, knavish stratagem, of which Mephistopheles himself might have been proud. On the 26th of November, a day before this letter appeared in the paper named, the Charleston *Mercury* had, with a broad smile, informed its readers that Walker and the republicans had been completely outwitted by the Lecompton convention; the constitution recited: "And no slavery shall exist in the state of Kansas," but the only object of that provision was to give the gentlemen of the Washington *Union* a small plank on which they might stand in practicing their feats of jugglery.<sup>2</sup>

1 "Thus you see that whilst, by submitting the question in this form, they are bound to have a ratification of the one or the other, and that while it seems to be an election between a free state and a pro-slavery constitution, it is in fact but a question of the future introduction of slavery that is in controversy; and yet it furnishes our friends in congress a basis on which to rest their vindication of the admission of Kansas as a state under it into the Union, while they would not have it, sent directly from the convention.

"It is the very best proposition for making Kansas a slave state that was submitted for the consideration of the convention." Rep. of Comm., 35th Congr., 1st Sess., vol. III, No. 377, p. 147.

2 "It is clear that the pro-slavery party have completely outwitted Walker and Stanton and the whole black republican party; and that, after all, Kansas will apply to congress for admission as a slave state, with a pro-slavery constitution. . . . Now, if the right of property in slaves now in this territory shall in no manner be interfered with, how is slavery abolished? It not only exists, but here is a guaranty that it shall in no manner be interfered with. We have

When Buchanan, in his annual message, officially placed himself at the head of these political jugglers, the sheet repeated its point<sup>1</sup> in a polite and serious manner indeed, but with the utmost positiveness, while warmly praising his position on the whole question. The Le-compton *National Democrat* had made the same point, with the same firmness, on the 19th of November. And the person who believed he should reject all these witnesses must have allowed himself to be convinced by John Calhoun's official declaration. In his proclamation of the popular vote, on the 21st of December, we read, a vote should be cast "for or against the future introduction of slavery." This was still another falsification, for instead of "slavery" he should have written: *of slaves*; but this much appeared beyond a doubt from this official document, that the popular vote did not extend to the slavery that existed.

The popular vote resolved upon by the convention was an adder hidden in a fish-skin. In the convention itself there were decided partisans of slavery who branded the scheme as a base piece of villainy.<sup>2</sup> It had been

not a doubt that the first part of the clause seemingly abolishing slavery was inserted for the benefit of just such people in the north as the editor of the *Washington Union*. It will give them a small plank on which they may stand in practicing the juggling feats of humbuggery, whilst the prohibition in the latter part of the clause secured to the pro-slavery party substantially Kansas as a slave state."

<sup>1</sup> "Whether the clause in the constitution is voted out or voted in, slavery exists, and has a guaranty in the constitution that it shall not be interfered with; whilst, if the slavery party in Kansas can keep or get the majority of the legislature, they may open wide the door for the immigration of slaves."

<sup>2</sup> Randolph, of Atchison, said: "Now, what was this scheme? What is said? Why, here we have two constitutions — one for slavery, and one without. Well, that's a good one. (Laughter.) Yes, you may laugh; it's just humbug. The fact is it is a slave-state

hatched by one Martin, a clerk in the department of the interior, and the writer of the letter to the Jackson *Mississippian*.<sup>1</sup>

The president must really have had an enviable temperament, if, under such a condition of affairs, things seemed to him to have as bright and promising an aspect as the article in the *Union* of November 18 would have one believe. What he subsequently said about his frame of mind on this matter during the first terrible shocks of the hurricane of secession exceeds the bounds of credulity, but he was spite of this, by no means, now, in a very cheerful

constitution, and a slave-state constitution. That's it; you may laugh. I'll tell you, the world will soon be laughing at us. This is a grand humbug. It's not fair. It is supposed by some of the gentlemen here that they are awful smart, or that the abolitionists are awful fools. We expect them to vote for a slave state in this way. They are not such fools as you suppose. But let us suppose that they are such fools. Is it right to swindle them in this way? It isn't fair; I won't do it. If we are to submit it at all, submit it fair: let them have a free-state constitution if they vote to beat us, or do not submit it at all. I tell you this scheme of swindling submission will be the blackest page in your history; and we will never hear the end of it."

And Mobley: "It is a swindle—a monstrous fraud. It wears falsehood on its face in letters of brass. It pretends to submit the constitution, and does not. This is a glaring fraud. It was concocted, not by the pro-slavery party, but the political democracy. It is a lie, a cheat, a swindle." *Congr. Globe*, 1st Sess. 35th Congr., App., pp. 485, 486.

<sup>1</sup> "It cannot, at least, be documentarily proved that he was an emissary of the administration. He stated that he had brought no instructions with him from Washington, and even that his chief had expressed himself to him in favor of a popular vote on the entire constitution. On further examination he had, however, to admit that Secretaries Thompson and Cobb had shown themselves not dissatisfied with the resolution whispered by him into the ear of the convention." *Rep. of Com.*, 36th Congr., 1st Sess., vol. V, No. 648, pp. 49 and 157-171.

humor. The moral side of the question may not have touched him in the least, and he could even calmly and serenely face the storm of republican indignation, confiding probably in his frequently tested democratic coat of mail; but he was not so obtuse a politician not to (even if he had been mistaken on it for a moment) see very soon and very clearly what evil days were in store for him, as the official head of his party. Douglas showed little inclination to swallow the "Lecompton swindle,"—all the so-called "free democrats" declared that, if they made the attempt, the bit would infallibly choke them,—in his own state, the *Philadelphia Press*, the organ of Colonel Forney, the leader of the party in Pennsylvania, was nauseated at the sight of it. This was a kind of signs of the time that a man like Buchanan understood perfectly how to read. While the *Union* trumpeted thus loudly, the president was endeavoring to dissipate the approaching storm-cloud before the tempest should break loose. Secret negotiations about a compromise were carried on with Walker, who had come to Washington. He agreed with the president that the legality of the convention should not be attacked; but he demanded that the legislature should be empowered to call another convention, whose draft of a constitution should be submitted to the approval of the people. This was asking Buchanan to do the very reverse of what he had just done. Whether he did not now secretly curse the hour when, true to the old custom, he resolved to act on this question too as train-bearer to the slavocracy, cannot be said; but once he had lifted its train, he could no more drop it than could the boy in the fairy tale tear away his finger from the feathers of the golden goose. Even if Martin had not been his emissary, and if he, under the delusion that he was thereby averting a catastrophe, ran

after one, he now had to become its standard-bearer, if, to use a forcible American expression, he did not want to "face the music."<sup>1</sup>

The president and his governor had allowed themselves to be parted so widely from each other by events that they could not now meet half way. And even if Buchanan had been willing and able up to the last day of November to turn around, he certainly could not do so the day following. Walker's representative closed the only road through which, perhaps, a retreat could still be attempted. Stanton, urged onward by an irresistible power, and dreading, from the exasperation of the free-soil people, that they would, at any moment, break out in fatal acts of violence, on the 1st of December called an extraordinary session of the legislature for the 7th of the month, to see how they could wipe out all that the Lecompton convention had done.

Buchanan had entered on the duties of his office with the joyful confidence that the Kansas question would be settled forever before congress met, and this is how matters stood when the thirty-fifth congress opened its first session on the 7th of December, 1857.

<sup>1</sup>The Washington correspondent of the *Commercial Advertiser* writes on the 24th of November: "Unfortunately for the president he allowed his cabinet to commit him and to commit themselves also upon the matter without due consideration. There is now no retreat for them. They have determined, as a unit, to face the music—that is, to stand by the convention at all hazards—against Douglass (sic), R. J. Walker, Col. Forney, and a host of southern democrats. No northern democratic member of the house can vote for the acceptance of the constitution with slavery, and it is in that form that it is to be presented."

## CHAPTER III.

## THE ANNUAL MESSAGE OF DECEMBER 8, 1857.

The fall elections had resulted so favorably to the democrats that the tone of the people in Washington became more confident than ever. The correspondent of the New York *Tribune* there inferred from this, that, with the election of an anti-slavery legislature in Kansas, the struggle for freedom was not victoriously ended, but would rather begin.<sup>1</sup> The prophecy was fulfilled. But the more the democrats allowed themselves to be misled by their triumphs to lift their heads in defiant confidence of victory, the less reason had the republicans to drop theirs. Even before the meeting of congress, it was more than questionable whether a direct inference from the results of the election, as to public opinion, could be pertinently drawn. The elections had taken place before the perfidious game of the Lecompton convention, in all its vileness, had been exposed to the light of day. Hence, only if the wish were father to the thought, could it be inferred, from them, that the party might dare, unpunished, to make the Lecompton swindle the basis of a new attack, in the interest of the slavocracy. That was the calculation of a gamester whom passion had deprived of the power of reflection; for even, leaving out of consideration the doings in

<sup>1</sup> "The general result of the recent elections, with the exceptions of Kansas and Massachusetts, has encouraged the administration and confirmed the democratic party in its diffusion-of-negroes policy. A bolder tone is observable here since the New York election. Notwithstanding our triumph in Kansas, the contest for freedom is not over, but is only beginning." The N. Y. *Tribune*, Nov. 14, 1857.

Kansas, the autumn months had been very rich in events, and what had happened was not calculated to strengthen the position of the party.

In entering on the duties of his office Buchanan had unhesitatingly left the president of the Union so far behind the partisan that he had used in his inaugural address a haughty tone which accorded badly with the actual state of things. Notwithstanding the many electoral victories the party had to record, not the faintest echo of this tone was now to be heard in his annual message. It began with a funereal jeremiad over the "deplorable" economic condition to which the country had been reduced, in a night, so to speak, notwithstanding its unbounded natural wealth and its rich harvests. The economic state of the Union, indeed, presented the picture of a luxurious country whose blossoming splendor and wealth of fruit had been suddenly ruined by a terrible and disastrous hailstorm. The sun, indeed, is wont to bid many a prostrate blade to rise again, and the devastation is generally not as great as is thought at first. That this case would be no exception to the rule was so certain that Buchanan rightly expressed the fear that rapidly returning prosperity would too soon make the people forget the lessons bitter experience had just taught them. But the probability of the realization of this fear must have been all the greater, the more absolutely and generally the people approved the view of the president, that the present economic crisis — in contrast with all previous ones which were traceable to the co-operation of various causes — resulted "solely from an extravagant and vicious system of paper currency and bank credits." It was indisputable that this system could not be too severely condemned, and that it occupied the first place among the direct causes of the catastrophe. But that

the evil effects of the bad system had grown to such enormous dimensions and cast their roots so deep could be accounted for only by causes much more universal and of much earlier date. It was evident, in the first place, that the "crash" was by no means confined to the United States. The "crash" occurred in the United States first, and was the immediate impulse to the production of the entirely similar and, in part, no less violent commercial crisis in Europe; but the latter was not produced by it; it had its origin in the same general causes. In the crisis of 1857 the dark side of rapid and increasing consolidation, by the modern methods of trade and machine industry, of the national, economic life of civilized nations, into one great world-economy, became clearly manifest for the first time.

The transformation and new-formation of the economic life of Europe, in the sixteenth century, became so profound and was so rapidly accomplished, in comparatively so short a time, because the sudden and bountiful flow of silver from Spanish America was allied with the progressive derangement and change in the great commercial highways of the world between the Orient and Occident, which were a consequence of the sea route to India. The influence which the rapid increase of the production of gold exercised, since 1849, was certainly neither so great nor exactly the same as the former, but the two were essentially similar events; other and deep-rooted causes — there cheaper ways of transportation and here new means of trade and production — caused a new development which must continue uninterruptedly, but whose intensity is greatly added to and its *tempo* considerably accelerated by the rapid increase of the precious metals.

According to Buchanan's message, the gold yield of

California alone, during the last eight years, amounted to \$400,000,000. Since 1851, the gold diggers in Australia, likewise, were numbered by thousands. According to Evans, the total annual production of £7,000,000-£8,000,000 in the year 1849 rose to £34,000,000-£35,000,000 in the years 1853-1857.<sup>1</sup> Colossal as these figures are, one would remain far behind the facts, if, from them alone, one drew a direct inference as to the intensity of the impulse given to the whole economic life of the western civilized world, and especially of its leading countries, by this extraordinary increase of gold. On the firm basis of the precious metal, credit paper of every conceivable kind towered into a pyramid of giddy height. The demands made on capital by the utilization of steam-power were so enormous that the flow of gold would not have overrun the bounds of a healthy economic development; nay, it even could not, by a great deal, have satisfied real wants. A large field of prosperous activity still remained to the modern system of credit. But it was more and more lost sight of, that, even in the age of steam, time must remain an essential factor in every process of development; and, discounting the future by decades, stirred the credit-fire under the boiler to such a heat that an explosion was inevitable. That conscious swindling, in this economic carnival, played a part is self-evident. It was not of decisive importance, however. The mischief had its source in the ignoring of the two facts that production may surpass the capacity for consumption, and that a business enterprise to be warranted should not only be desirable in itself, and become at some time or another undoubtedly remunerative, but must answer an already existing want, or at least be able probably to create such a want within a reasonable time.

<sup>1</sup> The History of the Commercial Crisis of 1857-1858, pp. 27-29.

The United States would necessarily reap greater advantages than any other country from this co-operation of the new technic achievements with the sudden increase of gold, but, for the very same reasons, the right limits would necessarily be earliest and furthest overstepped in the United States. The largest part of the new treasures was dug out of its soil, and promised the quickest and greatest multiplication if intrusted to it again in the form of economic enterprises. Circumstances had made the desire of gain, skill in acquisition and a spirit of bold and venturesome enterprise the domineering and most striking traits of the national character; and the natural resources of the immense country had just been disclosed sufficiently to show clearly the impossibility of forming an idea now of what its economic greatness would one day be. Nowhere was it so difficult as here always to bear in mind that it is only in fairy-land that one can charm what he likes into existence out of nothing, but that real life knows only development, and that rapid as that development may be, the wishes and endeavors of individuals always greatly exceed the extreme limits of velocity set in the life of nations by the nature of things, to the possibility of development. Here scarcely an undertaking could be imagined which did not appear remunerative, if one only put the time in which it would be remunerative correctly into the calculation. But in this respect precisely, sober heads might too easily make serious miscalculations, because one was left entirely in the lurch by all the previous experience of mankind. Machines driven by steam had accelerated the material development of the whole civilized world, in a way of which earlier generations were able to form no idea whatever. Even those who, now, not only saw the change going on before their eyes, and daily felt its ef-

fects, direct and indirect, in a hundred ways, but who were active factors in it, were like swimmers in a powerful stream; even the weak and unaccustomed did not sink as easily as in shallow, stagnant water, but only the strong and skilful remained masters of their movements; the multitude rushed with it whithersoever it carried them with irresistible force. All, indeed, under the pressure of necessity, learned more or less well to reckon with the small part of the new facts which affected them most immediately; but even the clearest heads were not yet able to get a lucid and exact picture of the phenomena in their entirety, not only because the rapidity of the development was so enormously accelerated, but also because, in many essential respects, a far-reaching transformation of the entire organization of society began to be accomplished with the change in the conditions of production and trade. But in the United States the impulse was strongest and the resistance of friction weakest. Here there was no history of many centuries, with its social and political traditions, customs and institutions, to maintain a relative stability in the material circumstances and in the sentiments, thought and will of the people such as exists in Europe, and like a dam to keep the new economic era from deluging the land with the suddenness and violence of a cataclysm. Everything was in process of a growth of unparalleled extent and intensity. As the water must run down the valley until it meets the basin of a lake or finds its way to the sea, the settlement of the west had to progress unceasingly until civilization had taken possession of the continent from ocean to ocean. The treasures created by the quiet labor of nature, during innumerable myriads of years, and yet untouched by man, had to be garnered up. The treasure-diggers who annually pressed upon their predecessors

were numbered by hundreds of thousands,—they came armed with all the acquisitions mankind had made since prehistoric time,—each one of them used his arms more vigorously and strained his wit more intensely the larger the drops of sweat were that flowed from his brow, because as they fell he expected to see them transmuted into gold,—the institutions of the country allowed every one the freest and fullest manifestation of his strength, and the thoughts, aspirations and doings of all spurred each one on to utilize the possibilities offered, to the utmost. Every one pushed and crowded and was, in turn, pushed and crowded, so that not only the pressure of the onward-striving masses grew in almost geometrical progression, but energy overstimulated, more and more generally, became impatience and precipitation, which seemed to make all victims of the delusion that to-morrow nothing could be done which had not at least been begun to-day, and that everything must be done immediately and at the same time. With every forward step the picture of the future assumed more gigantic dimensions and appeared in more captivating colors. Greater and greater became the number of narrow rooms in Europe into which its brightness streamed as the glad message of promise. It lured hundreds of thousands every year across the ocean. The new world received a large amount of capital daily from the old in the form of strong arms, skilful hands and clear heads. The instinct of acquisition it was that first urged them to cross the sea, and hence the national spirit, in its predominantly economic phase, became incarnate in them with astonishing rapidity. To the growth from within outwards, which had even now surpassed all that the development of nations in former times could show, there was superadded that which might be compared to the mechanical increase

in size of an avalanche. The magnitude of this factor could not, indeed, be foreseen from one year to another; but, at least so long as the direction was an ascending one, this uncertainty served, for the most part, only to supply new food to the inclination people felt to wander from the grand reality into unrealizable dreams. This people, who were then reproached in Europe, even more than now, for their cold-blooded sobriety, worked themselves deeper and deeper into the delusion that the fancy could scarcely keep pace with the reality, and were thus led to mould the reality in their minds in accordance with what imagination pictured to them.

The building of new railroads naturally occupied the first place among the great economic enterprises. There was not in the new world, as in the old civilized countries of Europe, a dense net of artificial highways. Leaving out of consideration the near neighborhood of the larger cities, in the free states of the east, there were really but few that deserved the name. Corduroy roads, through swamps and sands, annoyed the traveler greatly, and, in many places, he might be glad if, in the bad season, he could pursue his journey any distance without serious interruption. Cities, the names of which were known the world over, were frequently connected by roads which could not compare even with the turnpike roads of Germany. The further one went west the more frequently could one scarcely say whether he was traveling on a real highway or only on a "trail" gradually beaten into something like a road by the wagons of the earliest pioneers as they passed over ground which no wheel had ever furrowed before. But now, side by side with and over these primitive highways of trade, railways were built in every direction. The whole development which in Europe embraced a period of many centuries, and in

some places of two thousand years, was overleaped. The United States began, so to speak, at the end. Europe had all it could do to provide the chief lines of existing trade with the new means of communication; but here, in addition to this, a civilization had to be created. Railways had not only to precede artificial roads, but to wide circles of the people it did not, by any means, seem an absurd idea to build them into the wilderness. They were to open up the rich back-lands, which without them would have to remain for decades longer the home exclusively of the savage and the buffalo. The whistle of the locomotive was certain to be followed by the settler.

This was right enough; but the question suggested itself, whether settlers would come, or even could come, so quickly, or in such numbers, that the enterprise would pay. Was not a great part of the roads which connected really important places with one another built much in advance of the times? These starting-points and termini were certainly — if the expression be allowable — ripe for railways. The distance between them, however, was, for the most part, great; and whether the same question could be answered in the affirmative for the intervening country was more than doubtful. As a rule, the profitableness of a railway depends mainly on the development of local trade; and this was, for the most part, so slight that, to say the least, it was highly improbable that any interest could be paid immediately on the capital invested in railways. On the other hand, railways were naturally the best instrument for the development of local trade, and as they were becoming, year after year, the most important means of intercourse of the civilized western world, they necessarily became, year after year, simply a condition of the existence of cities: every mile which was in any way added to the railway net of the country was a

step mere towards making populous and commercial cities without railway connections an impossibility. Hence the peculiar circumstances of the country made it incomparably more frequently here than in the densely populated states of Europe, a necessity to build railways which — judged exclusively from the point of view of the payment of interest on the capital invested — would turn out to be unsuccessful economic enterprises. But for this very reason, the danger of precipitation was also much greater here: the more people had to reckon with the future, the more easily could one be misled into taking the present too little into consideration; that is, into basing one's calculations too exclusively on what he supposed he might expect from the future.

As the state was not the railroad builder with both the moral right and the actual practical possibility, in enterprises of a permanent character conducive to the common welfare, to throw a larger or smaller part of the cost on the future, the evil consequences of all the uneconomic — uneconomic in the sense just referred to — construction of railways would, necessarily, within a conceivable time, be keenly felt by a large part of the people; but that fact — the fact that the state was not the builder of the railways — was only another reason that made them shoot up like mushrooms after a rainy night.

There was no question, in the construction of railways, of humanitarian, but simply of economic, ends; and hence individuals as the builders of them were found, only when they expected to do a good business by constructing them. Large capital can, indeed, dispense with the immediate earning of interest, in expectation of subsequent great success; and this it naturally did here to a greater or less extent. But, as a rule, the risk was so

apparent that the builders of the railways did not intend a permanent investment of their capital. They staked only the comparatively small sum necessary to start the enterprise. The construction funds proper were provided by the middle classes out of the savings they had accumulated by hard work. These were in no condition to form a judgment as to the probable profitability of the roads, and did not even try to form such a judgment. Why should they hesitate to invest their money in high, interest-bearing bonds? since — at least so far as they were informed — existing roads paid very well, and their capital was secured, because, in case the companies did not fulfill their obligations to their creditors, the roads would become the property of the bondholders. Before it could be seen on what an unsubstantial basis this reasoning rested, the builders of the roads had really done a splendid business — partly by the awarding of the contracts or by assuming them themselves, and partly by selling their stock at the right time. If they were cautious people, there was no necessity of their engaging in stock-jobbing at all, and yet they could count on a large profit. As everybody believed in the great future of the roads, a rise in the stocks was as good as certain, and everything depended on fixing the sale for the exact moment when the rising tendency would reach the highest point.

Considering the disposition of people generally to become intoxicated by this business “boom,” such a mode of procedure would have, even in the absence of all *mala fides* on the part of the builders, called many a new road prematurely into existence, and would have reduced the well-being of many a family. But where such rich booty was the allurements, *mala fides* naturally soon took possession of the field, and it met with the best success. To

these railway enterprises there were added others which were subsequently called "foundations" (*Gruendungen*), in Germany, and the "founders" were by no means always people who are ever and everywhere known as swindlers, and who move about continually in the vicinity of the boundary line, the crossing of which is certain to bring one before a court of criminal justice. They were generally men who considered themselves thoroughly honorable, and were so considered by others. They only did as directors and members of administrative boards without hesitation what they would have condemned with unfeigned moral indignation outside of business life and as simple individuals.<sup>1</sup> Business life, when the business had assumed great proportions, had long since begun, like high politics, to carve out a morality of its own — a morality which departed widely from the commandments and prohibitions of civic morality. A refined system was developed under which the capital put into the enterprises by the "founders" contracted more and more, and their profits, at the expense of the deluded bondholders, swelled to greater and greater dimensions.<sup>2</sup>

<sup>1</sup> "I believe myself to be strictly justified when I say that the revelations of the last ten years show that, in the management of these great and useful corporations, our most eminent business men have not scrupled to do or to wink and connive at courses of conduct which involved directly or indirectly almost every crime against property known to our laws. I aver my solemn belief that most eminent business men, banded together and acting as a board of directors, have pursued methods which, if a single man in his private capacity should pursue, would convict him irredeemably of crime, and crush him with ignominious punishment.

"The consequence has been that one of the most important, yea indispensable, elements of property in this land is so associated with deceit and fraud that it is likely to become a by-word and a hissing!" *The Independent*, Oct. 8, 1857.

<sup>2</sup> See the excellent description in the *Independent* of July 16, 1857: In an article of the *North American Review* of January, 1858 (p. 166),

Not only were interest and unearned dividends paid out of the construction capital, but purchases of building material, to the amount of double what was needed, were made on credit, and one-half of it immediately sold in order to carry the vile operations still further with the proceeds. And it was all the easier and safer to keep playing this game undiscovered, until the "founders" had bagged their game, as among the public generally an epidemic of child-like confidence prevailed, while legal control was utterly insufficient, and conditions had become developed in the entire system of credit which powerfully promoted economic thoughtlessness and swindling of every description.

The two last-mentioned evils had their roots, to some extent, in the political nature of the Union. They certainly were neither impossible in a unit-state nor unavoidable in a federative state; but they had had so luxurious a growth and eaten their way so deeply, because thirty-one legislatures, entirely independently of one another, with insufficient penetration and comprehension and with not entirely pure moral principles, had managed their affairs confusedly and regardlessly without plan and without aim, legislating at cross-purposes, whereas, in its economic life, the practical consolidation of the Union into a national state was rapidly and uninterruptedly progressing. The politico-economic wisdom of congress frequently, indeed, left much to be desired; but still, in the average, its members surpassed those of the legislatures of the states in education and natural endowments, while their field of

we read: "The seeming, though in almost every instance unreal, prosperity of our older railways, has given a stimulus to enterprise in the construction of new routes of travel; and railway corporations have been enabled, by the prestige of dividends that were never earned, to obtain loans to an incredible amount, and often on an incredibly slender basis of actual property and potential income."

vision was broader, because their point of view was so much higher. And so the motives that guided the law-makers in Washington were not always above suspicion; but what here seemed too insignificant to even warrant an attempt at improperly influencing legislation was frequently considered remunerative enough, on the smaller stages of the separate states, to set in motion tongues with whose piercing whispers the corridors and reception rooms of the American "Capitol" are so familiar.

Perhaps the constitutional provision that transfers the regulation of commerce between the states to congress afforded a possibility of preventing many of the evils arising out of the fact that thirty-one different legislatures had power to grant charters for the construction of railways and to make laws governing the joint-stock companies. But, leaving the general political question entirely out of consideration, it might very easily have had very bad consequences, if congress had now given to this clause a scope which had never been allowed it when there were no railways and when joint-stock companies still played a relatively subordinate part in the economic life of the people. The country was confronted now with new problems, and many and serious mistakes were, therefore, unavoidable; but all errors of principle assumed a much greater significance when committed, not by the legislatures of individual states, but by congress, whose laws were in force throughout the entire land. The experience gained in bankruptcy legislation was, however, not calculated to make congress itself inclined to leave to Washington the most essential portion of the experimentation relating to these matters. But above all, a satisfactory regulation of them was not possible unless a thorough reform of the atrocious banking system put a stop to the woeful abuse of credit.

Buchanan was certainly right when he said it was an "anomaly" that the federal government, to which the constitution had granted the privilege to coin money, "should have no power to prevent others from driving that coin out of the country," by paper "which does not represent gold and silver." The country was supplied with paper money by fourteen hundred banks "acting independently of one another, and regulating their paper issues almost exclusively by a regard to the present interest of their stockholders." And this does not, even remotely, show the real extent of the confusion. The more than fourteen hundred banks not only acted independently of one another, but every state had its own banking system, and those systems differed from one another not in points of subordinate importance only; the differences between them were differences of principle, and reached even to their foundations.<sup>1</sup> Even if each, in its way, had been admirable, this state of things would have been attended by many and great inconveniences. But in reality they gave occasion always to much criticism, so that the proper way to put the question was to ask, not whether this was better than another, but whether it was less bad than another.<sup>2</sup>

<sup>1</sup> Baker distinguishes three principal classes: "The specie system," "the safety fund system" and "the free banking system," "which has but a paper basis." *Banks and Banking in the United States*, p. 44.

<sup>2</sup> "A banking system which varies from state to state, and which, outside of New England and New York, where it is by no means perfect, is as bungling a contrivance, for the ends to be answered, as was ever inflicted on the patience of mankind." *The Financial Flurry*. *Atlantic Monthly*, November, 1857, p. 119. In addition to this, it was frequently much worse with the execution of the laws than with the laws themselves. Baker, whose work cited above appeared in 1853, asks: "But where is an instance that directors of fraudulent or irresponsible banks have been made amenable to the violated laws of the state?" p. 26.

That no one was legally bound to take the notes of the banks in payment could weaken the bad effects of this legal anarchy but little, for they had become the basis of all business life to such an extent that it was practically impossible to refuse them.<sup>1</sup> But if it required some study to become acquainted with the bank laws of all the states, what was there one had not to do to acquaint one's self, even superficially, with the solvability of the banks? The more business life in general partook of the nature of a revel, the greater the number in which the banks shot up out of the ground; and the greater their number, the more they endeavored to take the wind out of each other's sails by not only readily meeting all the wishes of their customers, but even anticipating them. The greater the competition was which the newly-established banks had to meet, the more were they necessitated to push ease and freedom in their mode of transacting business to the limits of recklessness, and even beyond them; and, the easier and freer they were in their business methods, the less solid became the customers they obtained. Whether the larger or the smaller banks did most mischief by this disastrous rivalry, it is hard to decide. If the bad influence which the former exercised extended over a much larger area, the corrupting effects which the latter frequently had on the business life of their narrow fields of operation were all the more intense. "Instances have occurred," says Baker, "in which bank-bills have been put into circulation before the bank itself had either a banking house, books of account or even capital to com-

<sup>1</sup> "We constitute, by our acts of legislation, bank-notes as the currency of the country; and although they are not strictly a legal tender, yet the trader, mechanic or farmer who should refuse to receive them in payment could have but little to do with the community." Baker, *loc. cit.*, p. 25.

mence with." The brisker business life became, the greater too became the supply of "money;" and the easier it was to get "money" or credit, the greater the briskness introduced into business life. The boiler was heated at once from above and below; and the greater the tension of the steam became the more coals were put on both above and below.<sup>1</sup>

The steady deterioration of the "money" found its natural expression in a corresponding steady enhancement of prices; but this steady rise in prices acted at first like a stimulant on business: in every department of it increased activity developed into a violent fever. The enormous increase of imports had, for years, awakened here and there the gravest anxiety. During the ten years from 1844 to 1854, they had risen from \$5.03 to \$10 per capita.<sup>2</sup> As freight rates were high at the same time, ship-owners did a most thriving business. The *North American Review*<sup>3</sup> states it had happened that a ship paid for itself in a single year. On the other hand, the profits of importers began to diminish seriously, as the market was overstocked. The proximate conse-

<sup>1</sup> The following figures borrowed from the report of the secretary of the treasury, McCulloch, of December 4, 1865, will suffice as an illustration. The first figure gives the condition on the 1st of January, 1857, the figure in parentheses that of January, 1858: Bank-note circulation, \$214,778,832 (\$155,203,344); deposits, \$230,351,000 (\$185,932,000); loans, \$684,456,000 (\$583,165,000). Congr. Globe, 1st Sess. 39th Congr., App., p. 36.

<sup>2</sup> ". . . To these ten dollars we must add charges and duties, and profits, that will bring the whole up to an average of sixteen or eighteen dollars of merchandise imported for each soul on our soil, each of the last two years (1853, 1854). Such a monstrous fact needs only to be stated. It needs no Poor Richard to cipher out its meaning and its consequences." J. W. Laurens, *The Crisis: or, The Enemies of America Unmasked*, p. 230.

<sup>3</sup> Jan. 1858, p. 166.

quence of this, however, was not a decrease but a further increase of imports. As credit was to be had everywhere, an effort was made to remedy this by purchasing much more than was required. Of course, the prices at which the auctioneer had to let one-half of these imports go were under-prices; but with the proceeds one could get on a little while longer, and thus leave time for fortune to bethink itself of some new saving favor.<sup>1</sup> The derangement of the right relation between capital and credit, as bases of economic life, became greater and greater, and daring ventures, in the same measure, became greater and more universal. Even in 1853, Baker wrote: "There are enterprises enough at the present moment actually undertaken to task the labor of the next twenty years to pay for, and each additional undertaking opens a new vista to still more magnificent projects." The feverish desire to grow rich rapidly spread from the commercial and industrial centers over the whole country and attacked all classes of the population. In "regular" business, credit was substituted for the working capital, that the latter might be cast into one of the innumerable urns of fortune which promised all the miracle of its rapid doubling or trebling. Everything became an object of speculation, and everybody speculated.<sup>2</sup> The demands made by all the habits of life naturally increased with the same rapidity and to the same

<sup>1</sup> "Those who took only a quarter of a million dollars' worth of goods from England, under the favor of the banks, advised one-half, though it was well known that the major portion of these purchases would have to go to auction. The operations on the part of thousands merely represented a race against time, on the strength of bank favors and foreign credit." Evans, *The History of the Commercial Crisis of 1857-1858*, p. 94.

<sup>2</sup> "Nor is the speculative spirit confined to our commercial cities; it pervades the whole country, and a fictitious value is affixed to

extent;<sup>1</sup> and the increased demands, in turn, heightened and spread the fever of speculation, because they could not be satisfied quickly and completely enough in any other way.

And thus it went on, in endless reciprocal action. As the *North American Review* happily expressed it, people were building an inverted pyramid: a marvelous structure, which did not taper as it rose, but grew broader the higher it towered. It had only one defect: a compara-

everything animate or inanimate, movable or fixed, which has any value at all." l. c.

"The man who has been possessed of a sufficient working capital has been tempted to invest it in stocks, and to rely on loans or long credits for the means of conducting his own operations. The importer has speculated in western city lots, and discounted the notes of the jobbers to meet his obligations in the foreign market. The jobber has bought railroad bonds under par with his funds in hand, and, as his notes came to maturity, has paid them with the paper of his customers. And the retail dealer, buying on eight months' credit, and thus realizing the proceeds of his sales before they became due, has gone with them into the stock market, and resorted to loans when his notes reached maturity." *The North American Review*, Jan. 1858, p. 166.

"Merchants are forsaking their legitimate business and dabbling in this pool (the monstrous and over-bloated sin of stock-gambling). Their clerks, following their example, gamble too. Simple men, seeing these marvels of success, venture their hard earnings and go to gambling likewise. The lawyer follows suit; and, that there may be no want of moral sanction, ministers of the Gospel are found, not a few I am informed, secretly buying and selling stocks." *The Independent*, Oct. 8, 1857.

<sup>1</sup> "Much of the trouble is due also to the extravagance and reckless waste of our people, which, though owing in some degree to our want of good manners and good taste, are directly traceable to the stimulus given to expense by the over-issue of artificial money." *The Financial Flurry*. *Atlantic Monthly*, Nov. 1857, p. 119. Baker gave expression to the same censure four years earlier, and traced the evil to the same causes.

tively light blow would make it lose its centre of gravity and crumble to pieces.

The declaration of bankruptcy of the Ohio Life and Trust Company on the 24th of August, 1857, is wont to be generally considered as the blow that introduced the catastrophe; but the structure had been trembling, from summit to base, for some months.<sup>1</sup> Although the amounts involved were large enough to cause this bankruptcy to make a great impression,<sup>2</sup> it was mainly the accompanying secondary circumstances that gave it so melancholy an importance and celebrity. It was not one of the new "foundations," but an old trust company, which had always enjoyed a good reputation, and which had declared its half-yearly dividend a few days before it suspended payment. It was this that made the blow act like an alarm signal. Mistrust took the place of uncritical, sanguine confidence — the propelling power that made the numberless wheels of the whole moving apparatus hum so merrily about each other. The bankruptcy of a few large railway companies, like the Erie & Michigan Southern, which had also had the best of reputations, soon fanned the spark into a flame. The dry material lay everywhere piled so high that the fire could not but eat its way further, without any artificial assistance; but a powerful clique of stock-jobbers blew through their "bear" speculations on it — systematically discrediting

<sup>1</sup> "A series of failures had begun in America for several months before the commencement of the crisis, but did not attract much attention." Evans, *The History of the Commercial Crisis of 1857-1858*, p. 34.

Carey calls the financial crisis of 1857 "the most destructive, and, to merchants generally, the most unlooked for of all that stand on record." *Review of the Decade, 1857-1867*, p. 17.

<sup>2</sup> \$2,311,263. Bolles, *Chapters in Political Economy*, p. 129.

railway values especially — with pouched cheeks.<sup>1</sup> The decline of prices, which had begun even before the collapse of the Ohio Life and Trust Company, became greater and more universal, and assumed, in part, the character of a sudden plunge. The chorus of dancers was again led by the railways, whose second and third issues of bonds, as was alleged by the article in the *North American Review* already cited, could scarcely be exchanged for the same quantity of blank paper. But bank credits had thus far been based, by way of preference, on railway values; and the banks which had already been seriously affected by the collapse of the Central America, with a semi-monthly remittance of gold from California,<sup>2</sup> were exceedingly alarmed and began to curtail their credit business. This was, no doubt, warranted, but its effects were very disastrous. Sobriety did not come to the people, but inebriate-like optimism turned into inconsistent pessimism. As it was the banks that in the first place had put the speculation carnival on the stage, the least that could now be expected of them was that they would keep within the bounds of discretion. But they, most of all, became the victims of unreflecting faint-heartedness. The greater and more general embarrassment became, the more they believed that salvation could be found only in the most energetic carrying out of their

<sup>1</sup> Bolles prints the following passage from a New York letter to the *London Times* of September 10, 1857: "A large body of active houses are known to be associated for the purpose; to influence the press to work out their views, and are alleged not merely to operate with a joint capital, but to hold regular meetings, and permanently retain legal advisers whose chief vocation, it may be assumed, is to discover points that may enable the validity of each kind of security to be called in question, and thus to create universal distrust."

<sup>2</sup> The *Independent*, Dec. 31, 1857.

policy of contraction, and the consequence was a real panic.<sup>1</sup>

From the 8th of August to the 5th of September, the contraction amounted, in round numbers, to \$10,000,000 (\$122,077,252 and \$112,221,365). As the fall payments were near at hand, this alone was a considerable sum. If the banks had stopped here, people would, after all, have gotten off pretty well. But, during the course of the month, they withdrew six millions more from trade.<sup>2</sup> The tumble of all values and the scarcity of money were, in consequence of this, so great that the banks themselves were caught in the eddying waters and carried into the whirlpool. The number of banks that suspended specie payments from the 25th to the 29th of September, in Pennsylvania, Maryland, Virginia and Rhode Island, was estimated at one hundred and fifty.<sup>3</sup> The banks of New York were strong enough, at first, to meet all their obligations without difficulty. But, as they bore the weighty responsibility of the policy of contraction,<sup>4</sup> jealousy and animosity now became allied with thoughtless pusillanimity. When it was seen, from the bank statements for

<sup>1</sup> The *Bankers' Magazine* (XII, p. 430) subsequently wrote: "The contraction of bank accommodations at New York, it is now conceded, was unnecessarily sudden and too great. . . . This course of contraction is now considered by our leading bank directors as unnecessary, and as productive of nearly all the evil that has arisen. A more liberal policy would have saved the merchants extraordinary losses." Bolles adds: "Indeed, many of them saw the end of their fatal policy, and made an effort to extend their loans: but, as all the banks would not agree to this, it was finally abandoned." Chapters in *Political Economy*, p. 136.

<sup>2</sup> The *Independent*, Oct. 15, 1857.

<sup>3</sup> Evans, p. 34.

<sup>4</sup> "The loans of the New York city banks were contracted \$25,000,000 between the 1st of August and the 24th of October." Bolles, p. 129.

the week from the 3d to the 10th of October, that there was a further contraction of \$2,700,000, their measure was considered full, and people wanted to ruin them too. On the 13th of October, they were, by concerted action,<sup>1</sup> so pressed with demands that they lost courage. Eighteen of them suspended cash payments immediately. On the next day the other banks resolved to follow their example, and now the banks in the remainder of the cities of the state, in Boston and in all New England, could not, or would not, hold out any longer.

It soon appeared that the catastrophe could well have been avoided. The banks of New York proved to be still perfectly solvent.<sup>2</sup> But, at the moment, this was of little avail. There was a crash and a fall, as if a whirlwind had, with irresistible force, hewn its way through a mighty forest. The *Independent* of October 22d enumerated fifteen railway companies, with a burthen of debt of over \$181,000,000, which had collapsed during the last thirty days.<sup>3</sup> The total number of bankruptcies

<sup>1</sup> "A preconcerted run." Evans, p. 34. "As the banks had further applied the screws on depositors seeking discounts, the depositors resolved to break the banks, and immediately commenced a run, which has ended in general bank suspension; the Chemical Bank being the only one continuing to pay in gold." The *Independent*, Oct. 15, 1857.

<sup>2</sup> "It is true that in many places specie was demanded, but it was not distrust in the ability of the New York city banks to redeem their notes which led their holders to demand payment of them in specie. All of the notes were amply secured by the pledge of sound bonds held by the state comptroller, besides the specie owned by the banks. And, in fact, every note was paid. Not a bank in New York city failed in 1857 having insufficient funds to pay every dollar of its circulation. Their notes circulated without loss of value during all the time that specie payments were suspended." Bolles, p. 133.

<sup>3</sup> "Having neither gone to protest on their floating debt, suspended or made an assignment of their property."

in the United States and Canada was estimated at five thousand one hundred and twenty-three, with an aggregate capital of nearly \$292,000,000, of which perhaps \$156,000,000 were secured, so that \$136,000,000 were definitely lost.<sup>1</sup> These figures may, on the one hand, be too high, but, on the other, they by no means show the entire real loss. In order to fully measure the effect of the catastrophe, the enormous reductions in the prices of all goods must be taken into the account. The farmer, too, who had not shared in the bankruptcies to the extent of a single dollar, suffered severely enough, as pork which had been worth \$24 per barrel had to go in search of purchasers at \$15, and flour that had been worth \$10 per barrel was paid for only at the rate of from \$5 to \$6. The planter fared scarcely any better than the farmer. The *Evening Post* was written to from Mobile that one thousand bales of cotton, even at five cents per pound, could find no purchasers if the money had to be laid in cash on the table. The pressure which the general crisis exercised on cotton prices meant, to the south, according to the estimate of Senator Garlington, of South Carolina, a loss of \$70,000,000.<sup>2</sup> The farmers and planters, however, still had their products, although they were greatly depreciated, and the harvest had been a good one; but on what were the workingmen who had been discharged on account of the depression in all branches of business to fall back? Their number was frightfully large, and the winter had just begun.

The message of the president was specially mindful of these pitiable victims of the catastrophe, who suffered most sorely from it, although they had no share in the guilt. Buchanan was no cold-hearted egotist, and the

<sup>1</sup> Evans, pp. 34, 125.

<sup>2</sup> The *Independent*, Dec. 31, 1857.

sympathy he expressed for these unfortunates he certainly and truly felt. But it was just as certain that he looked upon their misery as he did on the whole maze of ruins that covered the land from one end to the other, not simply from the purely humanitarian point of view.

It was surely his duty as president to take some position on the causes as well as on the probable consequences of the calamity, and his message did this in a way which showed that he did not take the matter lightly, although he did not and could not comprehend its scope in all its phases, and could not measure its bearing, because he had not fully understood its causes. But, in all probability, it produced the greatest anxiety in his mind when he viewed it from a third point of view, which he did not even hint at in the message. What consequences would the direful collapse of the over-sanguine prosperity of the country have for the democratic party and for himself, in his capacity as head of that party? At first nothing could be said in answer to this question except that these consequences might be very serious; but that was bad enough, since, in the case of a man like James Buchanan, there was more danger that he would be driven to some deplorable resolution, by his wavering between fear and hope, than by a disagreeable but undoubted certainty.

Buchanan was too much of a routine politician not to make extensive use, in his political thought and calculations, of the unreliable support of precedent. And now so much was said and written of the precedent of 1837, that he could not help pursuing the comparison to its ultimate details, even if he had not hit on it himself. But the experience Van Buren had had, twenty years before, was not at all calculated to make him very confident. In one very essential point, indeed, the circum-

stances were entirely different, and in his favor. The finances of the Union had now no connection whatever with the banks, and hence were not even indirectly affected by the catastrophe which had overtaken them. Buchanan, of course, did not fail to call attention to this happy consequence of the independent treasury, which was an achievement of Van Buren's administration. But no political capital could be made out of it, because, for a long time, only one opinion had prevailed on this subject, viz.: that, in this respect, the present situation was preferable to the former one. On the other hand, the crash of 1837, notwithstanding the unquestionable honors Van Buren had won in the administration of the finances, was the primary cause of his political death and of the victory of the whigs in the next presidential election. Its history taught the doleful lesson that the masses are very much inclined to lay the load of responsibility for such calamities, to a greater or less extent, on the shoulders of the party in power, and especially on the administration, without inquiring whether that burthen should rightly be laid upon them. Men always like to look for a scape-goat, and if there be question of affairs in general, intellectual sluggards naturally turn their eyes first on the government, and if they do not do so of their own motion, the political opposition takes care to direct them towards it. No matter what its true and direct cause may be, the party in power has seldom any good to expect from great and wide-spread dissatisfaction.

In the case before us, it was certainly impossible to charge congress or the president with having occasioned the catastrophe, or to allege that it could have been averted by them. But it did not at all follow herefrom that only universal dissatisfaction would have to be reckoned with — a dissatisfaction which does not reason, but is

inclined to strike simply to vent its anger. Had legislation or the administration done nothing, directly or indirectly, to intensify the crisis or to make its disastrous consequences more disastrous still? These, too, were important questions; and Buchanan must have been very blind if he had persuaded himself that they would be unanimously answered in the negative of conviction.

He had himself, with the best of intentions, done something which was judged disapprovingly by many. In order to come to the relief of the people, as far as he could, during the terrible scarcity of money, he had ordered certificates of debt of the United States to be purchased with the stock of gold in the treasury. Considered as a financial operation, this was, of course, a bad business transaction; for these bonds were at a very small premium, and were now, without any necessity, redeemed at a very high premium.<sup>1</sup> But this measure did not cause any great alleviation of the market, while the vaults of the treasury were rapidly becoming depleted. As early as on the 13th of October, the Washington correspondent of the New York *Tribune* informed it that the redemption of the funds had been suspended, because the stock of gold, which had still amounted to about \$19,000,000 in September, had now dwindled to \$9,000,000. And these \$9,000,000, too, were flowing out on one side of the treasury with frightful rapidity, without being replaced by an inflow of gold on the other. In December such a pass had been reached that it became necessary to have recourse to paper.

A writer in the *Atlantic Monthly* scornfully told the

<sup>1</sup> "The usurers and the stock-jobbers received sixteen per cent. for what they had bought at a premium of but two or three per cent." Mr. Buchanan's Administration. *Atlantic Monthly*, April, 1858, 1 748.

president that he had so inconsiderately arraigned the banks, in his message, because they had not a sufficient metallic basis for their note circulation, and now the administration was bringing little bits of paper, back of which there was no hard money at all, among the people; their only basis was: "We promise to pay."

It must have come to this, even if there had been no redemption of the stocks. "The current revenue is but one-fourth of the amount of the current expenditures," wrote the correspondent of the *New York Tribune* in his report of October 13. This was the principal cause of the ebb in the treasury, and a change for the better was scarcely to be expected in the near future; for the cause was the new tariff of March 3, 1857. The singular spectacle was repeated of congress passing stringent laws to decrease the revenue of the Union, because the surplus of the treasury, existing and prospective, threatened serious embarrassment, and of its action being followed immediately by a baleful change of circumstances, which substituted great scarcity for the threatened *embarras de richesse*. The customs constituted the chief source of revenue of the federal government, and, under the old high tariff, their product during the most brilliant economic period which lasted several years, with their colossal imports, had risen to such a height that a large reduction was looked upon as urgently demanded. Imports now greatly shrunk in consequence of the crash, and paid, for the most part, much lower duties.

The falling off must, therefore, have been enormous.<sup>1</sup>

<sup>1</sup> Thus the *Independent* of October 8 reports: "The receipts at customs are very small: In all September they only amounted to \$2,289,488 64, whereas in September, 1856, they were \$3,803,425.58, showing a decline of \$1,513,976.74. The import of merchandise last week amounted to \$2,593,054; corresponding week of 1856, \$2,650,392; decrease, \$54,338. The greater part was warehoused."

As the new tariff had only just gone into force, an immediate alteration of it could scarcely be thought of. Buchanan, at least, expressed himself to that effect in his message, and congress approved his view. Hence recourse had to be had to loans. Opinions here could differ only as to the *How*, not as to the *Whether*. It was, nevertheless, certain that the debts contracted would be entered by the opposition in flaming letters on the list of the sins of the democratic party, and especially of the administration; and it was just as undoubted that the opposition's declarations and denunciations would not die away without leaving some impression. The democratic party was responsible for the new tariff. Under the old one, the government would have had to feel the effects of the crash less severely; and a government never wins popularity by getting into debt.

If Buchanan's expectation, that the effects of the catastrophe would be soon, perhaps too soon, recovered from, proved to be well founded, and if, further, in the real political questions of the day, the smoldering fire of discontent, in his own party, was not fed anew, he might, indeed, feel confident that the economic calamity would be attended by no specially serious consequences to him or to the party. But who was able to guaranty that those two conditions would be fulfilled? Was it not necessary, or at least highly proper, to come to the assistance of the healing effect of time by turning the attention of the people from the economic situation to other matters which might excite their interest, if not stir their passions, just as much? But if this were done, was there not reason to fear that there might be danger of jumping out of the frying-pan into the fire? Was not the turning of the public interest to such things the surest means to sow the seeds of dissension still more widely,

and to make them shoot up more luxuriantly? Or could any questions be found on which the party would, without a doubt, take a position unanimously and with some manifestation of enthusiasm?

These were the sceptical reflections between which the president oscillated. Documentary proof of this cannot, indeed, be produced; but so far as it is at all allowable, in writing history, to base a statement on grounds of internal probability, this assumption is unquestionably warranted. The whole political situation and the peculiarities of the president, in which the firmness of the partisan bordering on utter regardlessness was intimately intertwined with a weak character and an elastic morality, pointed directly to it; and by it, his entire policy, forever wavering between bold adventure and anxious groping, is most easily and most surely accounted for. It would certainly be going much too far to say that the consideration of the fatal consequences which the commercial crisis might have for himself and his party was the direct incentive to any of the more important undertakings or projects of his administration; but he always took counsel of that consideration at this time, and it had much to do with the carrying out of all his ideas.

The conduct of the head of a great nation, during a period of four years, can of course never be properly and exhaustively described in a single word, and the richer in events the period has been, the less possible it is to describe it in this way. But Buchanan's administration is an exception to this rule. Although much more eventful than that of all his predecessors, it can be more easily and better characterized in this way, and so I might call Buchanan the president with a lightning-rod policy. It was not the commercial crisis that made him this; but from his whole nature, as a man and a politician, he

could be nothing else in a highly critical period. This was plainly evident, even from his inaugural address. As, on the one hand, he knew only too well that there were millions who did not belong to the good patriots who saw, with him, a satisfactory settlement of the slavery question in the principle of the Kansas-Nebraska bill; and as, on the other, he declared it would be the greatest good fortune if the people would now turn to more practical and more urgent tasks, it was obvious that he would, with patriotic zeal, test every existing question, by inquiring whether the majority of the people could be induced to look upon it as more practical and more urgent. And if it could not be asserted that any of the existing questions possessed this character, his patriotism would necessarily impel him to create one or more which might be expected to possess it; for in his opinion the further agitation of the slavery question was entirely unwarranted and would be attended by the most direful consequences. But what he had to adduce, in this respect, in his inaugural address, was worth little or nothing. The construction of a "military road" to California, and the best disposition of the public lands, were certainly highly important questions, but it was impossible to give them such proportions as to make them overshadow the slavery question; and it had already become sufficiently manifest that they too were weighed down by the curse that had fallen on all national questions indissolubly amalgamated with the slavery question. The difficulty of a suitable employment of the surplus revenue which received so unexpected a solution by the crisis, now called for no action, and only those who speculated on getting fat contracts could be induced to take a lively interest in the increase of the navy. Hence only the intimations about the eventual acquisition

of new territory could be considered. Whether, back of them, there was a fixed programme, or whether they were merely intended cautiously to ascertain how great a charm such bait would exercise, could not be discovered from the vague phrases used. Buchanan, therefore, could not abandon himself to the illusion that public opinion would find, in the inaugural address, the answer to the question, what the more practical and more urgent questions were to which they should turn; and hence it was to be inferred from it that he would soon be seen devoting himself, with ardent zeal, to a hunt after such questions. The self-overestimation of successful mediocrity, ambition and vanity exercised, indeed, a much greater influence on his policy than has been generally believed; but, even if these qualities had been entirely wanting in him, he certainly would not have been satisfied with being the head of the administration. Their flattering whisperings, to which the self-complacent man listened only too willingly, and honest, earnest patriotic solicitude pointed out the same way to him. The role of a president of high politics not only pleased him, but he considered it his duty to play it, in order to force the people away from the unfortunate question which was impelling them with demoniacal power towards a most terrible catastrophe. But as a really great question neither existed nor could be raised, he seized on everything that presented itself, in domestic or foreign politics, with uncritical zeal, in the foolish hope that in the opinion of the public the resultant of the combined forces of all the small questions would toss the giant weight of the slavery question out of sight. But he did not meet with real success in a single one of them. In the most important, he made a complete failure, and the aggregate result of his altogether too polit-

ical policy was that the flames he wished to stifle shot higher still, because they were all connected, directly or indirectly, with the burning question of slavery.

With respect to the first question with which Buchanan tried to play this role, he could not be reproached with having artfully raised it, or even with having given it unseemly proportions. He found it as a legacy from former presidents or from the thirty-first congress, and its solution had become so urgent that it would have been a serious neglect of duty not to grapple with it earnestly and vigorously. But to judge of his mode of procedure, it is not sufficient, as he and many writers — among them the German, Neumann, by no means friendly to him — did, to simply state this fact. Side by side with pertinent reasons, there were motives that could not be approved; in the choice of means to attain the laudable end, he was guilty of greatly exceeding his legal and constitutional powers; improper grounds of action caused mistakes in the execution of the wrong, or, at least, insufficient, plan — mistakes which would have become almost ruinous; and, in consequence of all this, the result was, essentially, a covering up of the evil instead of its removal, which was desired, and which it was pretended had been accomplished.

The annual message asked for the formation of four new regiments to reduce the seditious Mormons, in Utah, to obedience. "This is the first rebellion," said the president, "which has existed in our territories, and humanity itself requires that we should put it down in such a manner that it shall be the last." Strange! Buchanan had neither reached the stage of extreme senectitude when the memory does not reach back farther than a few weeks, nor did he give the least ground for the suspicion that he was in conflict with the policy, approved and sup-

ported by the democratic party, of his predecessor, who had over and over again declared the free-soil people of Kansas to be rebels, and who had made ample use of the federal troops against them. Not only Kansas but the entire people had the right — and it was even their duty — to be informed how the contradiction between this declaration and Pierce's words and deeds could be reconciled. Either Buchanan's assertion was a notorious untruth or Pierce had lied a dozen times and scandalously abused his official power.

The information furnished by the message on the history of the development of the rebellion and the state of affairs at that time was very meager. The president recalled the fact that Utah had been organized as a territory by a law of September 9, 1850, with a provision that the governor of the state should be *ex officio* superintendent of Indian affairs. On September 20th of the same year Brigham Young was appointed governor, and had since then filled the office. Since, at the same time, he claimed, as the head of the Mormon church, to govern its members by virtue of direct divine inspiration and authority, and to dispose of their property, his power over both church and state had been absolute. Utah was inhabited almost exclusively by Mormons, who, with the fanatical certainty of conviction, looked upon him as the ruler of the territory, set over it by God. If it pleased him to bring about a conflict with the federal government, they would yield him absolute obedience, and, unfortunately, it could scarcely be doubted that he desired a conflict. All the federal officials except two Indian agents had left the territory to insure their personal safety, because the only government it had was the despotism of Brigham Young. Then the president proceeded as follows: "This being the condition of affairs

in the territory, I could not mistake the path of duty. As chief executive magistrate, I was bound to restore the supremacy of the constitution and laws within its limits. In order to effect this purpose, I appointed a new governor and other federal officers for Utah, and sent with them a military force for their protection, and to act as a *posse comitatus*, in case of need, in the execution of the laws." The instructions given to Governor Cumming were made to conform strictly to the principle that the power of officials extended only to acts and not to religious convictions. When these instructions were dispatched, it was hoped that there would be no need of the military to restore and preserve the supremacy of the law; but this hope had now disappeared. Young had declared, in a proclamation, that he was resolved to assert his power by force, and had already given expression to this resolution by acts, although he had been assured by Major Van Vliet,<sup>1</sup> who had been sent to Utah to purchase provisions for the troops, that the government had peaceful intentions, and that the troops were to be employed only as *posse comitatus* when a requisition to that effect should be made "by the civil authority," in order to assist in the execution of the laws. There was reason to believe that Young had kept this issue in view for a long time. He knew that the continuance of his despotic power depended on the exclusion of all non-Mormon settlers from the territory. Hence he had been industriously collecting and manufacturing arms and ammunition for years, had given a military training to the Mormons, and had, as superintendent of military affairs, disaffected the Indians and stored up provisions for three years, with which, as he told Van Vliet, he would flee to the mountains and defy the entire power of the government.

<sup>1</sup> Thus the message. Van Vliet subscribes his report as "captain."

Buchanan could not have said less in justification of the fact that he had, on his own sole responsibility, sent a military expedition to Utah, and yet he said a great deal too much; for his nearly every sentence was either a grave charge against the 31st congress or the last two presidents, or convicted him of boldly exceeding his legal powers and of gross mistakes which were being already severely punished.

What Buchanan said about the nature and extent of Young's power as well as about the tendency, the effects and the aims of his policy was entirely appropriate; and the more he — without becoming guilty of the slightest exaggeration — filled out this outline with a description of the details, the clearer it became to the minds of the people that the situation was really a dreadful one and demanded a radical cure. But from this it followed directly that the responsibility for the atrocious anomaly of the existence of such a community as a territory, organized under a federal law, lay, in the first place, on the 31st congress, and, in the second, on the presidents who had made the head of the Mormon church governor or left him in that office. It was well enough known, even in 1850, that the religious fanaticism of the Mormons was not harmless, and was, by no means, a matter of indifference, from a politico-social point of view. In Missouri and Illinois, part of their history had been written in blood; and because their convictions and their aims had proved irreconcilable with the political institutions of the land and the ethico-moral convictions of the people, they had wandered over the desert and sought an asylum, in complete seclusion from the whole civilized world. With the fantastic and absurd garnishment of their belief, the political powers had, according to the principle of complete religious freedom and absolute sep-

aration of church and state, nothing to do. But the principles of an inflexible theocracy, the germs of which had been laid in the Mormon doctrine, came in conflict, at every step, with the fundamental principles of American nationality, and would necessarily, in isolation, lead to the development of a sacerdotal state, which would have to defend itself with the utmost energy against any organic connection with the rest of the people, because such a connection would render its decay and final collapse inevitable. Rigid exclusiveness was the first condition of its safe existence. And if all this was already determined by the political nature of Mormonism, the same was true, in a still higher degree, of the social institution, which, partly on account of its exclusiveness—that is, its absolute irreconcilability with the ethico-moral convictions and with the fundamental principles of legal life of the rest of the people—tended more and more to become its principal pillar, although it was only a supplementary appendage to the original body of doctrine. And people were sufficiently well informed of their existence in 1850, although Brigham Young did not venture, until 1852, the publication of the decisive revelation which Prophet Joseph Smith pretended to have received, in reference to polygamy, on the 12th of July, 1843. Even if congress could not be accused of conscious imprudence, it had at least manifested a great lack of judgment in giving the Mormon district a territorial organization, and by so doing Mormonism, in a certain sense, a legal sanction—a lack of judgment all the more difficult to understand and which deserved to be all the more severely condemned, because there had been no lack of warning voices.<sup>1</sup> It gave the poisonous germs a soil to feed them, and the presidents, by appointing Young as governor, acted as if

<sup>1</sup> Especially Bell of Tennessee.

they considered it their duty to promote its luxurious development as far as lay in their power.

The consequences of this policy became more evident every day; but both congress and the executive not only looked with folded hands on the development of the evil, but continued to provide it with fresh aliment. The interests of the slavocracy, which controlled in all national questions, were guilty of this too, directly or indirectly. The Cass-Douglas invention of popular sovereignty had, indeed, been made only for the slavocracy; but as it had to be proclaimed as a principle universally applicable, the Mormons naturally claimed the benefit of it for themselves. No objection could be made to this, for polygamy as well as slavery was a "domestic institution," and with the rest of the institutions of Mormonism the federal government had no right to interfere, if, according to the fundamental principles of American nationality, the territorial population had to be recognized as sovereign on a question affecting the weal and woe of the entire republic so directly and in so great a measure as the slavery question.<sup>1</sup> The slavocracy of course had nothing against fair words. These very religious people allowed themselves this innocent luxury, on proper occasions, for the absolution of their sins; only they would hear nothing of taking steps against the Mormons, since the Mormons had no grudge against slavery and would cheerfully pay that price for admission as a state. As all the preconditions to the viability of slavery in Utah were wanting, this offer was wholly worthless; but before people were sufficiently clear on this point to grant that, room would be made for other considerations. Mormonism had grown strong enough and taken root sufficiently

<sup>1</sup> See Bell's appropriate remarks of January 27, 1858, on this point. Congr. Globe, 1st Sess. 35th Congr., p. 431.

to allow Brigham Young to have the flag of open rebellion hoisted as soon as Buchanan departed from the policy which the federal government had hitherto pursued.

That the message did not say a word about these two important chapters from the antecedent history of the rebellion could excite no surprise, but its whole representation of the rebellion was unintelligible because it did not refer to them. The president rightly traced the revolt to the nature of Mormonism, and yet it did not appear from his description that it had gone through any stage of development. Not the slightest intimation was given that his predecessors or congress had been guilty either of a sin of omission or of a sin of commission, and yet he claimed to have found himself confronted with a condition which made immediate and energetic action an imperative duty. When Cumming was given his instructions, he pretended to have ground for hope that the employment of force would not be necessary, and yet Young, it was said, had been industriously making preparations for years to forcibly assert his despotic power against the United States. These were contradictions which could not be reconciled. Logic was introduced into the matter only when the report was supplemented by the facts which Buchanan had thought well to be silent upon. By this means it was made clear, not only that this silence sprang from consideration for others, but that it was intended to protect himself also.

It was not precisely untrue that, as Buchanan said, Young had been the governor of the territory since its organization; but it was not the whole truth. Even Pierce had intended to remove him; but Colonel Stepton, whom he had sent to Utah in that behalf, soon became convinced that the Mormons could be governed only by the head of the church, and so reported to Pierce, who

followed his advice, and left matters as they were. That Young was a federal official only in form and in reality the ruler of Utah, was, therefore, not a discovery just made by Buchanan, but a fact long since established beyond a doubt, by what we may call the counter-proofs. Chief Justice Drummond, who, in his letter of resignation of March 30, 1857, exhaustively exposed the consequences of this fact, and based his resignation on them, had not come to recognize only after Buchanan's entry into office that it was "noon-day madness" to attempt to administer the law there as a federal judge.<sup>1</sup> His nomination to the office dated from the year 1854, and the Mormons had even then looked upon Brigham Young as their only rightful law-maker, and made no secret of the fact. Drummond was certainly not responsible for it, if Buchanan was really so ingenuous as to expect that the military *posse comitatus* would not have to act, but only to show itself, to mend matters. The picture he had painted, in the most glaring colors, could not make even the most thoughtless optimist imagine that that opinion of the Mormons, that is, of the entire population of the territory, was not an article of faith which would find expression in acts, in such a way that the civil authorities

<sup>1</sup> See the letter, Exec. Doc. 35th Congr., 1st Sess., No. LXXI, pp. 212-214. We may here quote two places verbatim: "The records, papers, etc., of the supreme court have been destroyed by order of the church, with direct knowledge and approbation of Governor B. Young;" "the judiciary is only treated as a farce; . . . it is noon-day madness and folly to attempt to administer the law in that territory. The officers are insulted, harassed and murdered for doing their duty and not recognizing Brigham Young as the only law-giver or law-maker on earth." Compare, however, the letter of the deputy-clerk of the supreme court, Bolton, of June 26, 1857, to Attorney-General Black, in which Drummond's charges are emphatically repelled. Ibid., pp. 214, 215.

would have the right, nay, that it would be their duty, to concern themselves with it. That picture showed the traits of fanatics raging with passion — fanatics for whom the most abominable crimes are converted into holy deeds — and placed Brigham Young in the center, as the scheming chief and the directing will.

It might be hard to determine whether, and to what extent, Drummond was guilty of exaggeration; but his description certainly contained so much truth that it was unquestionably the duty of the president to employ all the means furnished him by the constitution and the laws to effect a radical and permanent change. This does not mean, by any means, that he must, or even should, have acted as he did. Precisely because the evil had reached such a degree that none of the reasons which had hitherto prevented action should or could be considered, and because Buchanan, as undoubtedly appeared from his own utterances, had clearly recognized that it was of a chronic and not acute nature, cautious steps were demanded, and nothing should have been risked unless under absolute necessity. It was imperative not only that no wrong steps should be taken which might irritate the wound instead of helping heal it, but that all half measures, which, at best, could achieve only partial success, should be avoided — half measures by which people might delude themselves a few years longer, only to be finally convinced once more of the necessity of a radical cure, which last might be rendered much more difficult by the fact that the efflux of the poison had been partially checked.

Hence the first question which Buchanan had to ask himself was whether the problem could be taken hold of rightly and with the necessary energy without the in-

tervention of legislation. After what he had said of the nature of Mormonism, he should certainly have answered this question in the negative. But if he did not, and his affirmative answer did not exclude all doubt, he should not have come to a decision himself, but should have consulted congress; for, according to the spirit, if we may not even say of the letter, of the constitution, the will of congress should have governed; but he confronted congress with accomplished facts which greatly interfered with its freedom of will. There was nothing whatever to render this necessary. No material change of the situation, in the territory, had occurred since the last session of congress, and none was to be expected before its next meeting, unless produced by the action of the president. But if he was not of this opinion, or if he believed that, notwithstanding this, the federal government should no longer look inactively on the criminal game of the Mormons, the constitution gave him the right immediately to summon congress to meet. Was the matter not worth his doing this, and still of such eminent importance that the president did not hesitate to grapple with it on his own responsibility, and in a way which — leaving everything else out of consideration — made really enormous demands on the treasury, although it was a fundamental principle of the constitution that the administration should not lay out one dollar which had not been appropriated by congress? He could not protect himself by an appeal to the maxim *periculum in mora*. Even the statement that he had not expected that Cumming would have to call for the services of the troops could scarcely be reconciled with this. But above all, he had, by the way in which he executed his resolution, entirely abandoned the justification of himself by this argu-

ment, while the other argument, that his sworn duty to execute the laws left him no choice whatever, was refuted by the resolution itself.

The fact that the systematic disregard on principle of the laws in Utah dated far back, that his predecessors and congress had not opposed it, and that, in the main, the old state of things would continue if he left the territory to itself until congress met, certainly did not give the president the right not to fulfill his sworn duty to see to the execution of the laws, for a single day, to say nothing of a space of nine months. But it was not only not the duty of the president, but he had not the right, to make use of all the means for the execution of the laws that seemed to him expedient. He could only use those prescribed or allowed by the laws; otherwise he would begin to execute the laws by violating them himself. If these means were not sufficient he was freed from all responsibility, with the exception of that other duty, expressly imposed on him by the constitution, to inform congress thereof and to recommend the passage of such laws as seemed necessary to him. Hence no objection could be made to his appointment of a new governor and other federal officials without first consulting congress. The right to give them a military escort was not quite as indisputable; but this was not seriously objected to in any quarter, if the escort was to serve only for their personal protection, for which purpose little more than a corporal's guard would have been needed. But in what article of the constitution or what provision of law did the president find authority to send any number of troops he wished into a territory to serve the civil authorities in a case of necessity as a *posse comitatus*? What powers he possessed, as commander-in-chief, over the distribution and stationing of troops, did not enter into the question at all. He expressly stated that he

had sent them to serve as a *posse comitatus*, and hence the only question was whether he should have sent them for that purpose. The undisputed and indisputable lawfulness of the employment of the *posse comitatus* in the execution of the laws was no answer to this question; for the troops of the regular army no more became a *posse comitatus* by the president's calling them so, than a bird would become a fish by his declaring that it was one.<sup>1</sup> Neither the president nor the governor had even the right to call out the real *posse comitatus*, and the president considered it a self-evident consequence of his duty to see to the maintenance of the supremacy of the law, that he should give the army to the governor to be substituted for the *posse comitatus* — a self-evident consequence, for the message did not contain a single word in defense of the claim. But this was simply senseless, even if from that duty the more general right to employ the armed power of the country whenever, in his judgment, it seemed expedient or necessary, could be directly and undoubtedly deduced.

That he did not possess this right was not questioned

<sup>1</sup>Trumbull said on the 21st of April, 1858, in the senate: "Sir, there is no authority for the president to use the army as a *posse comitatus*; and it is a perversion of terms, and it is an absurdity, to call the military power of this country a *posse comitatus*. What is such a *posse*? It is the power of the county, the civil power of the county, summoned to the assistance of an executive officer to enable him to execute process, summoned to the assistance of a marshal, or a sheriff; but has your governor any authority to execute a writ? Has the governor of Utah, or any other governor of a territory, a right to summon a *posse comitatus* for any purpose whatever? I deny it. No such authority is given. The president has just as much right to assemble the whole army of the United States in the city of Washington as a *posse comitatus* to protect himself or to overawe congress as he has to assemble it as a *posse comitatus* to accompany Governor Cumming to Utah." Congr. Globe, 35th Congr., 1st Sess., pp. 1713, 1714.

by any one. The laws, of course, recognized the army as a means to maintain the supremacy of the law, but they also provided that the president should employ that means only under certain conditions; and that these conditions existed in the case before us was denied in some quarters, while the message was entirely silent on the question. The law of the 3d of March, 1807,<sup>1</sup> authorized the president to employ the land and naval forces of the United States in the execution of federal laws and the laws of a state or territory, in all cases in which he might, in accordance with existing laws, call out the militia for that purpose. In the law of the 28th of February, 1795,<sup>2</sup> which was referred to here, no mention was made of the territories, and hence it was not universally considered unquestionable that it applied to them likewise. As they were expressly mentioned in the law of 1807, it certainly cannot be denied that it was the opinion and the intention of the congress that passed this later law that it should be applied to them. Yet, very prominent politicians, who were also considered distinguished jurists, as, for instance, Trumbull<sup>3</sup> and Bell,<sup>4</sup> claimed that the president could not at all appeal to this law, since it allowed him to call out the militia only if requested to do so by the legislature, or, if the legislature could not be convened, by the executive of a state. That was not correct. This condition was inserted in the first section, "in case of an insurrection in any state, against the government thereof." It is not to be found in the second section, which relates to the hindering of the execution of federal laws. Here all that is required is that

<sup>1</sup> Stat. at L., II, p. 443.

<sup>2</sup> Ibid., I, p. 424.

<sup>3</sup> Congr. Globe, 35th Congr., 1st Sess., p. 1715.

<sup>4</sup> Ibid., p. 751.

the resistance must be by combinations too powerful to be overcome by the usual course of law or with the powers granted the marshals. If it must be admitted that this condition was fulfilled in Utah, we cannot understand how the president could be accused of exceeding his legal powers if he sent troops against the rebellious Mormons. But this was merely a theoretical question; for, according to his own statement, he had not done so, evidently because, in his own opinion, at the time when he appointed Cumming governor, the resistance of the Mormons had not assumed such a form that he would have been warranted by the requirements of the law to interfere with the sword. But the question was not what he should have done, but what, according to his own declaration, he had done, and which the laws of 1795 and 1807 authorized him no more than any other laws to do.

It certainly was not "a distinction without a difference" whether the army was employed in accordance with the laws of 1795 and 1807, or were placed at some one's disposal as a *posse comitatus*, but something essentially different. Even the masses of the people were sufficiently trained in political and constitutional thought clearly to understand this difference under certain circumstances, and to recognize its extent. But in this case that was not to be expected if the issue was in favor of the president. The terrible stories which circulated about the murdering band of "Danites," and the horrible crimes they had really committed in the territory and others they were said to have committed, had so far transformed the earlier theoretical, ethico-religious condemnation of these singular "Latter-Day Saints" into a feeling ready for action, that people were very much inclined to hail with lively satisfaction the putting of a rigid rein on their wild doings, even if a strictly consti-

tutional criticism found many faults with the means used by the government to attain that end. Yet, on the other hand, Utah was too distant, and, in the descriptions of the state of affairs there, the disgusting, revolting reality was alloyed with too large a proportion of fiction, for people, on sober reflection, to get into a great passion over what was going on within its borders. If Buchanan accomplished the end sought, quickly, surely, and at a relatively small cost, with the *posse comitatus* fiction, why should it not be winked at that he did not — even if it would have been constitutionally more proper — pursue a wildcat with the arms he would have used in a tiger hunt? But his policy drove the Mormons into open rebellion, which could be subdued only by calling out a large military force and at great cost; and the principal reason why he effected the very opposite of what he had intended, and of what would have insured forgiveness for the wrongfulness of his procedure, afforded another illustration of the old saying that the interests of slavery had to take precedence of everything else. To all for whom the party standpoint exclusively was not decisive, the legal as well as the political question was placed hereby in a very different light.

As early as June the troops intended for Utah were collected at Fort Leavenworth, and General Harney, who commanded the troops stationed — as a *posse comitatus* likewise<sup>1</sup> — in Kansas, was appointed commander of the expedition. Governor Walker repeatedly and emphatically protested against the troops being withdrawn from Kansas. In his report of the 20th of July to Cass, he said that the territorial government would be infallibly overthrown if at least two thousand men were not im-

<sup>1</sup>See Buchanan's answer of August 15, 1857, to the New Haven memorial. *The Independent*, Oct. 1, 1857.

mediately sent to Fort Leavenworth to support it.<sup>1</sup> This report, and a letter of the president dated July 12, which was intended completely to calm the governor, crossed each other. Buchanan wrote him: "General Harney has been ordered to command the expedition against Utah,<sup>2</sup> but we must contrive to have him with you, at least until you are out of the woods. Kansas is vastly more important at the present moment than Utah."<sup>3</sup> Of course, the president here was not thinking solely of Harney personally. The intention at first was to send three thousand men to Utah; now the number was reduced to two thousand five hundred; and at the last, it was thought that one thousand five hundred must be enough.<sup>4</sup> But weeks and months passed before even that number departed. "Pemaquid" wrote to the *New York Tribune* of September 5 from Washington that three months ago it had suited the government organs to impute so much evil to the Mormons with their pens, in order to divert public opinion from the real and living issues by a show of morality and decency, that now the expedition had been given up, as Buchanan really cared little whether Cumming reached his destination; for Brigham Young, by his declaration in favor of slavery, had become a pet of the slavocracy and, therefore, of the administration.<sup>5</sup>

The correspondent overshot the mark in the last sentences, as the Covode committee did subsequently, since he made mention of the charge that the Utah expedition

<sup>1</sup> Sen. Doc., 35th Congr., 1st Sess., vol. I, No. VIII, p. 47.

<sup>2</sup> How did this expression agree with the *posse-comitatus* doctrine?

<sup>3</sup> The *New York Tribune*, April 19, 1860.

<sup>4</sup> According to Bell's figures in the senate. Congr. Globe, 1st Sess. 35th Congr., p. 1751.

<sup>5</sup> The *N. Y. Tribune*, Sept. 7, 1857.

had been arranged in order to force slavery on Kansas, in a manner which left no room for doubt that he held it to be well founded.<sup>1</sup>

The expedition was not given up, and it had not been planned as a pretext to bring together so large a number of troops in Kansas, that, by means of them, a sufficient pressure might be exercised to realize the wishes of the south. That one of the reasons for the expedition was the wish to divert the attention of the people from the slavery question is at least highly probable, and it is documentarily established — as has been shown — that they did not begin to march until autumn, and had been reduced to one-half of the number originally determined on, because it was believed the troops could not be dispensed with there, without seriously endangering the Kansas policy of the administration.<sup>2</sup> Whether, and to what extent, this furnished an occasion for a criticism of Buchanan's motive, is a question on which opinions differed, according to men's views on the slavery question and the Kansas question; but the consequences of it were so disastrous that the partisans of the administration could serve it best by being entirely silent on this phase of the question.

General Scott relates in his Memoirs that he protested against the expedition which had been set on foot by the secretary of war, Floyd, on account of the great opportunities it would afford for fraud and intrigue.<sup>3</sup> This last was evidently a foolish charge, although the economic

<sup>1</sup> Rep. of Comm., 36th Congr., 1st Sess., vol. V, No. 648, p. 9. Majority Report of Frain, June 16, 1860.

<sup>2</sup> Buchanan himself says in his message of February 2, 1858: "I have been obliged in some degree to interfere with the expedition to Utah, in order to keep down rebellion in Kansas." *Statesman's Man.*, III, p. 2261.

<sup>3</sup> *Mem.*, II, p. 504.

history of the expedition constituted a wonderful illustration of the emphatic declaration which the president had made, in the inaugural address, on the duty "of preserving the government from the taint, or even the suspicion, of corruption."<sup>1</sup> Nor is the first allegation right. It is not only denied by Buchanan,<sup>2</sup> but Scott's instruction to Harney prove that here, as in many other questions, his memory or his vanity deceived him when he wrote his *Memoirs*. But even if Scott did not protest against the expedition, he called attention to how hazardous it was to begin when the season was so advanced. After Buchanan had let the entire summer go by, he thought he could not wait a single moment. In his self-defense, he afterwards congratulated himself greatly that he did not allow himself to be determined by this consideration to endure Brigham Young's lawless rule a year longer.<sup>3</sup> But in truth there was not question of a year. Spring and summer came before the troops could march through Salt Lake City and encamp in Cedar Valley, and before the Mormons submitted to the extent they did. If the postponement of the expedition until spring had delayed the quelling of the rebellion, a few weeks at the most would have been lost, while the United States would have saved all that the winter campaign had cost it. This cost was so great that it required no small degree of artlessness or audacity, after the result had thus passed judgment on this policy, to use it for the purpose of admiring self-contemplation.

On the 24th of July the Mormons, in Cottonwood

<sup>1</sup> Stenhouse relates that the Mormons had called the expedition the "Contractors' War." *The Rocky Mountain Saints*, p. 416.

<sup>2</sup> Mr. Buchanan's Administration on the Eve of the Rebellion, p. 239.

<sup>3</sup> *Ibid.*, pp. 234, 235.

Cañon, had celebrated the anniversary of their entry into the valley of Salt Lake ten years before. Here they received the news that the contract which intrusted them with the carrying of the mails to Utah had been canceled by the postmaster-general. The excitement was great, for they saw in this the first act of open hostility. Brigham Young reminded them that he had told them on the day to celebrate which they had assembled, that, in ten years, he would be able to cope with the United States.<sup>1</sup> The pulpit and the press had since then familiarized the multitude sufficiently with the idea to make them enthusiastically agree with the resolution announced, to oppose force by force.<sup>2</sup> Captain Van Vliet, whose mission has been already mentioned, was very courteously received by Young; but not only was the sale of provisions to him refused, but he was told, with the utmost decision, that the troops would not be allowed in the territory.<sup>3</sup> On the 15th of September, Young issued a proclamation in which he briefly recapitulated all the injustices that the Mormons had suffered for twenty-five years; declared their religious convictions to be the sole cause of their persecution; branded it as a shameful slander that the Mormons had ever demanded more than the rights guaranteed by the constitution to all other citi-

<sup>1</sup> "Give us ten years of peace, and we will ask no odds of the United States."

<sup>2</sup> Hyde, *Mormonism, its Leaders and Designs*, p. 177, gives the following citation from the *Deseret News* of September 1, 1856: "I say as the Lord lives, we are bound to become a sovereign state in the Union, or an independent nation by ourselves. I am still, and still will be, governor of this territory, to the constant chagrin of my enemies, and twenty years shall not pass before the elders of this church will be as much thought of as kings on their thrones."

<sup>3</sup> See his report of the 16th of September. *Message and Documents*, II, p. 25.

zens; complained that the mendacious tales of anonymous accusers and corrupt officials had not been examined, but that forthwith "an armed mercenary mob" had been let loose upon them, and that they had then been forced to seek refuge under the primeval law of self-preservation; in the name of the people of the United States in the territory of Utah, he, therefore, as governor, forbade any armed power whatsoever, under any pretext whatsoever, to come into the territory; commanded all to keep themselves in readiness to repel such an invasion, and declared the territory in a state of siege.<sup>1</sup>

This was indisputably an actual if not formal declaration of war, and it was meant seriously. Although Young was certainly not a comedian but an honest fanatic, he had a clear and really able head for political affairs. His thought, speech and actions were clothed in a fantastic, extravagant dress, but the kernel of them was always a sober and shrewd calculation. Even now he was not carried away by passion or megalomania. He had admitted to Van Vliet, without any reservation, that he would be defeated if the government persisted in its design, but added that it would find Utah transformed into a desert if it did so. Hence he desired to wage war with all his strength, and still without the shedding of blood, on the small force that was advancing against him, and which he felt able to cope with, in order, if possible, to deter the government from the further prosecution of its design, and to insure the possibility of a compromise in case he did not succeed.

On the 27th of September, Colonel Alexander crossed Green river. This, in Young's opinion, made the invasion

<sup>1</sup> See Hyde's report of the 16th of September. Message and Documents, II, p. 33.

a fact. His declaration that the troops might remain at Black Fork or Green river unmolested, and obtain the necessary means of subsistence during the winter, if they surrendered their arms,<sup>1</sup> could, of course, be taken notice of only as a new insult and provocation. To retreat without disgrace or covering themselves with ridicule was now impossible. But, at every step forward, the troops felt more bitterly how well founded were the objections to the hazardous enterprise of attempting the subjugation of the fanatics at this season of the year, in the rough mountainous country, and this, at first, only with infantry and artillery. Wells, the commander-in-chief of the Mormons, was instructed to shed no blood, but to direct his operations against the provisions and draught cattle. He was told to fight the intruders, not with powder and lead; but with hunger.<sup>2</sup> This must have been expected, and, therefore, care should, above all things, have been taken to protect the train by cavalry. But it was thought that the cavalry could not be dispensed with in Kansas, and Kansas was given the precedence. In addition to this, Alexander could not take the shortest road. From the camp at Ham's Fork, the distance to Salt Lake City, through Echo Cañon, was only one hundred and fifty miles; but the Mormons had put the narrow ravine in so good a state of defense that he did not venture to engage in a struggle with them there, and chose the road, twice as long, over Soda Springs. The Mormons hung continually on his flanks, and operated with such success against the train that he resolved to turn back, when the winter, by a snow-fall, announced that it did not intend to wait

<sup>1</sup> See Hyde's report of the 16th of September. Messages and Documents, II, p. 32.

<sup>2</sup> See his declaration in Townsend, The Mormon Trials at Salt Lake City, p. 33.

longer than usual, or to exercise a milder rule, to please the president. The news now came from Colonel Smith, leader of the other division, that Colonel Albert S. Johnston, who had in the meantime been placed in chief command, and who subsequently played an important part in the civil war, was fast approaching. Johnston's first care was to unite the troops. Before he could accomplish this, November had come, and it was full winter. The idea of pushing his way through the Wasatch mountains, before spring, had to be given up. On the 6th of November, Johnston set out for Fort Bridger to winter there. A part of the train could not be despatched, because, on the previous evening, the Mormons had again succeeded in dispersing five hundred head of cattle. The troops, with great effort, advanced slowly, the weather being rather cold and the snow deep. During the night, the cattle saved from the Mormons perished in masses from cold and hunger. The van required eleven days to travel the thirty miles to the fort which the Mormons had vacated the week before. Four days later (November 20) the dragoons under Colonel Cook arrived there with Governor Cumming. They had lost a large part of their horses, and cold and hunger had so reduced the troops that they were, at first, unfit for active service. With courage undaunted, but under great privation, they waited there inactively with their comrades who had arrived before them until the spring, to resume operations with better prospects of success.

Such was the condition of affairs when congress met.

The results of the president's policy were certainly not calculated to make the opposition approach the decision of the constitutional question in a placid frame of mind,—or to incline them greatly to grant the sum of six or seven figures for the contracts already concluded and partly

executed, without close examination and without raising the general question whether the president did not hold in his hand the purse as well as the sword, if, under the cloak of executing the laws, he could send any number of troops he liked to any point he liked, with nothing more to do but to present the bills to congress afterwards for adjustment,—or, and lastly, to persuade it to give the president, gladly and immediately, the four new regiments asked for, for the successful carrying out of his expedition, although the message had announced that, in consequence of the crash, the expected surplus in the treasury had been transformed into a deficit, so that recourse must be had to the issue of paper money.

So far as congress was concerned, all this could trouble Buchanan but little, as he certainly expected, and had reason to expect, that the majority in that body would, at the least, not leave him in the lurch. What effect the speeches of the opposition on all these points would have, outside of congress and among the people, was a very different question, as this did not by any means exhaust the arsenal of weapons which the message had placed in the hands of all the dissatisfied elements against the administration.

The information the president gave on the relations of the Union to foreign powers showed no clear horizon. There was nowhere to be seen a cloud large and black enough to warrant even the pretense that a heavy storm might soon break over the country. But little as the *nebulae* to which Buchanan referred could of themselves excite alarm, the manner in which he referred to them was a warning to be cautious. From those to whom Buchanan seemed an untrustworthy pilot, it could not be concealed whether he had seen reason for mistrust in his proposals. If his wishes were granted, it lay entirely

with himself to raise a little storm at will; and there was no lack of ground for the suspicion that it would not be displeasing to him and his official as well as unofficial advisers, if a stiff breeze should blow towards a certain point of the compass.

The differences with Spain of which the message spoke could not calculate on special consideration, as Cuba was not even mentioned, and long years of habit had brought it to such a pass that the relation of the Union to that power was scarcely imaginable without friction in all kinds of minor questions.

A matter that excited more attention was the fact that the president asked to be authorized to employ "other means" against Paraguay, if it did not agree to a demand, to be presented "in a firm but conciliatory spirit," that it make compensation for the many injustices it had done to American citizens, and give satisfaction for having fired on the armed American steamer "Water Witch," which had navigated the Parana in the interests of science and commerce and examined its navigableness. If Paraguay's guilt was really as undoubted and as great as Buchanan supposed, it was of course the duty of the Union to defend its citizens and their flag. But this, as the sequel proved, was by no means unquestionable; and hence it would certainly have been better not to leave the matter so entirely to the discretion of the president that it might end in war.<sup>1</sup> If congress had had to do

<sup>1</sup> By a resolution of the 2d of June, 1858, the president was "authorized to adopt such measures and use such force as, in his judgment, may be necessary and advisable in the event of a refusal of just satisfaction by the government of Paraguay." (Stat. at L. XI, p. 370.) Lopez ventured no resistance, as the commissioner, Bowlin, was accompanied by nineteen war ships with two hundred cannon and two thousand five hundred sailors and marine soldiers. On the 4th of February, 1859, a convention was concluded at Assuncion (Ibid.,

with a more powerful state, or if secondary intentions as to questions of importance had been suspected in the president, it would certainly have considered the matter more maturely before granting him the authority asked for.<sup>1</sup>

Congress proved this by not acceding to the wish of the president that he should be allowed to have the free disposition of the army in another question.

The American chargé-d'affaires, B. A. Bidlack, who had conducted the negotiations relating to the treaty of the 12th of December, 1846, with New Granada, had "upon his own responsibility and without instructions"<sup>2</sup> admitted in the thirty-fifth article thereof a guaranty obligation in respect to the isthmus of Panama.<sup>3</sup> Although Polk,

XII, p. 1087), and Buchanan announced in the annual message of December 19, 1859, that "all our difficulties with the republic of Paraguay have been satisfactorily adjusted." (Congr. Globe, 1st Sess., 36th Congr., App., p. 3.) In the book on his administration (pp. 261-267) he speaks with great satisfaction of this success, but forgets to mention that the claims of American citizens were found to be ungrounded by the commission appointed in accordance with the convention.

<sup>1</sup> Buchanan is also silent on the objection that he had exceeded the authority given him by putting the expedition on foot, because the condition precedent of refusal of just satisfaction had not been fulfilled. (See Congr. Globe, 2d Sess. 35th Congr., pp. 1604, 1608.) It may be remarked, in passing, that the shot at the "Water Witch" was not, as would seem from the message, fired altogether without provocation. (See *Ibid.*, p. 1605.)

<sup>2</sup> According to Buchanan's confidential message of April 5, 1860, to the senate, cited by R. Schleiden in *Die rechtliche und politische Seite der Panamá-Canal-Frage*. Preuss. Jahrbücher, XLIX, p. 595.

<sup>3</sup> "The United States guaranty, positively and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and, in consequence, the United States also guaranty, in the same manner, the rights of sovereignty

in his message of the 10th of February, 1847, called the attention of the senate to this, it seems probable to Schleiden that neither the president nor the senate then attached any particular weight to this point. By representing that the United States had a greater interest than any other people in the freedom and safety of all commercial highways over the isthmus, Buchanan asked for power, in case it became necessary, to employ the land and naval forces of the Union in the redemption of the guaranty obligation, as well as for further laws for the security of any other transit routes in which the United States might obtain an interest by treaty.

It would have been very hazardous, at this time, to agree to this request. But that the president, at this very time, should have asked congress for such a vote of confidence, was so great a piece of presumption that it might properly be asked whether it was cause for wonder or alarm. It could not be ascertained from the message whether Buchanan had even thought of England in the question; and it certainly was not impossible that, in his request, he had in view only the other Central American states. But this did not alter the fact that the differences between the United States and England, on the right interpretation of the Clayton-Bulwer treaty, had not yet been settled, and that it could in nowise be confidently expected that the pending new effort to come to an understanding would be successful.<sup>1</sup>

The president himself expressed the opinion that it would have been much better if the two powers had long since agreed to cancel the treaty and had begun negoti-

and property which New Granada has and possesses over the said territory." Stat. at L., IX, pp. 898, 899.

<sup>1</sup> See, on this whole question, the essay of Schleiden above referred to.

ations anew; if that had been done immediately, all the Central American difficulties would probably have been solved already. But the transit routes were of incomparably more importance than all the questions out of which the difficulties hitherto had grown. And now the president wanted to get such power in respect to the former at the moment that both sides were seriously considering whether the negotiations relating to the latter should not be canceled "to commence anew." Much might be said to show that an understanding could be still hoped for, only on condition that this venture was resolved on; but the better founded this opinion was, the more certain was it that Buchanan's request would have to be denied. Either he had reason to assume that it would be necessary, sword in hand, to defend the neutrality of the isthmus and the sovereignty of New Granada over it, or he had no reason for such an assumption. In the latter case his demand lacked all foundation, and in the former it was necessary to avoid, as far as possible, doing anything which might make it easier for England to oppose the right of the United States to interfere. Buchanan's statement that the interest of the two countries in Central America was identical was entirely correct, since it was confined to insuring the safety of trade on all interoceanic ways of communication over the isthmus; but for this very reason congress should not pave the way for a conflict by giving him the possibility of practicing high politics there at his own discretion. If he had no intention to do this, and if the transit routes were not endangered, the granting him such power would have been folly; for there was nothing to be gained by granting, it and it could not fail to arouse distrust; but if he had such an intention, or if danger threatened from any quarter, how could congress be warranted to

cast its own constitutional responsibility on the shoulders of the president? That the president offered himself as an Atlas, whose back was able to bear the burthen of those weighty interests of the country, could scarcely be considered sufficient.

In London no doubt was entertained of the honesty of Buchanan's assurance that he heartily reciprocated the friendly spirit in which England invited the Union to new negotiations. Great Britain was fully convinced that the edge of his demand was not turned directly against her, but it could not touch her agreeably on that account. The assurance of his secretary of state, in a note of the 20th of October, 1857, to Lord Napier, that "the United States . . . demand no exclusive privileges in these passages, but will always exert their influence to secure their free and unrestricted privileges, both in peace and war, to the commerce of the world," and his own declaration in harmony therewith, on the identity of the interests of the two powers in Central America, were satisfactory as far as they went; but they contained no clear, express disclaimer not to strive for a controlling influence there. If the equal rights of England to the transit routes depended, even in the smallest degree, on the good-will of the United States, then her rights were really not equal. But Cass had again, as Pierce had already done, rejected the proposal to allow a third power to decide, by arbitration, the controverted points of the Clayton-Bulwer treaty, although only England had anything to lose by a decision so made, as the United States did not claim to have any possessory rights in Central America; and in the diplomatic circles of Washington it was rumored that he had, in September, decidedly rejected the further proposition, in common with England and France, to guaranty the freedom and .

safety of the transit routes by a triple treaty. The reasons for the rejection were not particularly convincing in either case. A court of arbitration, Cass thought, did not commend itself, because the English language was best understood in England and the United States; and he is said to have urged against the triple treaty that England and France could, by separate conventions, accomplish with New Granada what the United States had already accomplished by the treaty of December 12, 1846. Buchanan evidently wanted to reserve full freedom for the United States or for himself to decide alone when and how they would fulfill the guaranty obligation assumed. The question was therefore warranted, whether the intention now imputed to congress was not prompted more or less by the wish immediately to use every opportunity that presented itself to obtain a domineering position. It could not be suspected that the transit routes were in danger from England, and just as little could it be suspected that Buchanan desired to have free disposal of the troops in order to checkmate England. "It is our duty to take care that the freedom and security of all communications across the isthmus shall not be interrupted either by invasions from our country or by wars between the independent states of Central America." There was no reason to doubt that, in this sentence of the message, those were correctly described whom the president wished to oppose, the occasion being given, with a cogent *quos ego*, without being obliged to have recourse to congress. But if he did this with the vigor which success demanded, England would be forced into the second place; and as in politics the appetite is best whetted by eating, he might be led by his first success to take further steps, among the remote, possible consequences of which serious differences with England might

perhaps not be considered the most dangerous. It was clear, from another part of the message, that Buchanan had a very definite cause to believe that the first step would become a necessity in the near future; and those who were so situated as to get a look behind the curtains knew that the further possibility, so far as it depended on the will of the president, was on the way to become a probability.

William Walker had suddenly re-appeared on the stage, after it had been supposed for a moment that a revolution of the wheel of fortune had relegated him forever to the ranks of retired adventurers. By the united efforts of the elements opposed to him in Nicaragua and the other Central American states, his power had been broken just as quickly as he had built it up. After several unsuccessful battles the continuance of the struggle had become impossible, and he must fear that the enemy, if he fell into their hands, would visit the same punishment on him that he had inflicted on Corral. This danger he escaped by delivering himself up on May 1, 1857, with sixteen companions, to the American commander of the American war sloop the "St. Mary's,"<sup>1</sup> who brought him to Panama, whence he proceeded to New Orleans. He began to agitate the equipment of another expedition without delay, and immediately found so much support that Cass sent a circular, at the end of September, to the proper officials with an order to prevent the execution of the illegal undertaking; and the secretary of the navy,

<sup>1</sup> In the opinion of Walker's friends his defeat was owing partly to the hostile attitude of Captain Davis. See, for instance, Zollicoffer's remarks, *Congr. Globe*, 1st Sess. 35th Congr., p. 285. His opponents and the administration, on the other hand, claimed that Davis, or, in other words, the administration, had saved him from certain ruin. See the statements of Toucey in his annual report and Doolittle's comments on the same. *Ibid.*, p. 356.

Toucey, took measures, at the beginning of October, to capture the filibusters on the sea, in case Cass's order was not carried out.<sup>1</sup> Walker was imprisoned in New Orleans, but set free again on bail in only \$2,000; and on the 11th of November he sailed in the "Fashion," as was given out, for Mobile, but really for Punta Arenas.

Of the further fate of the expedition the message could give no information. Indeed little was learned from it about the actual steps taken, although the message devoted a whole page to the matter. Walker's name did not appear in it, nor was it mentioned when and where he had begun his new march of conquest. These, however, were only editorial singularities, as a knowledge of these things had to be supposed.

On the other hand, a matter of essential importance was the dearth of proof that the government had done its full duty. Whether intended or not, it was none the less a fact that it could not be discovered from the message whether the president considered the existing laws insufficient. He indeed recommended "the whole subject to the serious attention of congress," since duty, interest and national honor demanded effective measures against the filibustering system; but he not only made no definite proposal himself, but did not even directly say that new and more stringent laws were needed. Emphatic, therefore, as was his condemnation of the wrong because contrary to international law, because disastrous and dishonorable, it still bore the character of vagueness. If Buchanan were fully in earnest in his condemnation, he should have avoided this; since he well knew that its honesty would be very much doubted by a great many. He did not need to ask himself now whether it was not an obvious consequence of the history hitherto of the

<sup>1</sup> Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 13, p. 7.

filibuster question: the fact was stated in the concisest terms in the official reports of the officers to the members of his cabinet.<sup>1</sup> Yet the fact was the essential thing, even if he had to suffer innocently for the sins of omission of his predecessors. But with what right could the co-author of the Ostend Manifesto, and the person elected by the Cincinnati convention, claim that he should be considered above suspicion in this respect? The Cincinnati platform had declared it to be self-evident that the American people sympathized with efforts at regeneration in Central America — that is, with the successes of the filibuster, Walker; and had given utterance to the expectations of the democratic party that the next administration would insure the ascendancy of the Union over the Gulf of Mexico; and Buchanan had declared that he heartily approved the platform in which his individuality would be entirely swallowed up and disappear.<sup>2</sup> The secretary of state had gone even

<sup>1</sup> Lieutenant Almy writes to Toucey on the 29th of October, 1857: "He (A. J. Requier, district attorney of the United States in Mobile) said that he could not but help expressing the opinion that public sentiment in Mobile was in favor of these expeditions to Central America; that it was a frequent theme of conversation on 'change, in the streets, and at the hotels; and further that there seemed an idea to be prevailing in this part of the country that the cabinet at Washington rather winked at the fitting out and departure of these expeditions than to be seriously disposed to prevent them." Ibid., p. 13.

<sup>2</sup> According to the *New York Tribune* of January 8, 1858, he had, on the 21st of May, 1857, telegraphed to a meeting held in New York to sympathize with Walker:

"I am free to confess that the heroic effort of our countrymen at Nicaragua excites my admiration while it engages all my solicitude. I am not to be deterred from the expression of these feelings by sneers, or reproaches, or hard words. He who does not sympathize with such an enterprise has little in common with me.

"The difficulties which General Walker has encountered and overcome will place his name high on the roll of the distinguished men

further. He had taken occasion to give public and emphatic expressions to his admiration for the person and doings of the adventurer. It was only natural, therefore, and was no evidence of unusual boldness, that Walker should have sent to Cass a formal protest against the request of the representatives of Costa Rica and Guatemala to take positive measures against him, although it was ridiculous for him to protest as the "rightful and lawful president" of Nicaragua.<sup>1</sup> By this protest the government was informed, in the most authentic manner, of his intention to return to Nicaragua; and of the three possible explanations why it did not prevent his doing so — the complete insufficiency of the laws, the great unskillfulness and negligence or the secret connivance of the government and its organs — the last was necessarily, judging from the facts cited, considered universally the most obvious and most probable.

Public opinion, however, was in error. The whole matter was very disagreeable to the administration, not because it wanted subsequently, on moral or other grounds, to sever itself on this point from the Cincinnati platform, but because the filibuster had, in an awkward way, thwarted its plans to carry it out.

The escape of the "Fashion" had prompted Buchanan to have Cass conclude a treaty in hot haste with Yrizarri, before the latter had so much as handed him his credentials as representative of Nicaragua.<sup>2</sup> Walker had put to sea on the 11th of November, the contract was

of his age. He has conciliated the people he went to aid, the government of which he makes a part is performing its functions without opposition, and internal tranquillity marks the wisdom of its policy." The final sentences make the correctness of the date seem doubtful.

<sup>1</sup> Sept. 29, 1857. Exec. Doc., 35th Congr., 1st Sess., vol. VII, No. 24, p. 6.

<sup>2</sup> See, on the Cass-Yrizarri treaty, Schleiden, pp. 610 ff.

signed on the 15th, and then the New York Steamship Company determined to have its outgoing steamer, contrary to the usual custom, run into San Juan del Norte, in order to get the treaty to Nicaragua soon enough to have its ratification in Washington by the end of November.

The message did not contain the least intimation about the treaty — certainly not because it was not of sufficient importance, but, on the contrary, because it was too important to allow anything, at this moment, concerning it to be divulged. Here we need only briefly mention two provisions of articles 15 and 16. The United States obtained the right, without a previous demand of the state government, to send troops over the transit route of Nicaragua, and after notice — not after a demand, as Yrizarri had desired — to defend it by force of arms and keep it open in case that duty was not fulfilled by Nicaragua. The gentlemen of the cabinet spoke to the foreign diplomats with wonderful frankness about the broad prospective which these provisions were destined to open. In a conversation with the Hanseatic minister resident, Dr. Schleiden, Cass called the Clayton-Bulwer treaty a “nuisance,” which must be canceled; and the secretary of the treasury, Cobb, even told him that the government was bent on a territorial acquisition, and that, on that account, the filibustering march was very inopportune, because it made it seem as if the government wished to use illegitimate means to accomplish its ends.<sup>1</sup>

In the light of these facts, the correctness of the judgment expressed above on Buchanan's request to be allowed to use the land and naval forces of the United States in the protection of the transit routes, if he thought it was

<sup>1</sup> See, on the Cass-Yrizarri treaty, Schleiden, p. 612.

necessary to do so, cannot appear doubtful. Any one who does not take Cobb's words cited above as conclusive evidence, must, indeed, consider it an open question whether the government intended to make any territorial acquisitions; for no positive proof of such an intention can be produced from documentary material. But this much is certain, that the president desired to carry out a great policy in the Central-American question, with all possible independence of congress — a policy which might lead to entanglements of the most serious consequence; and there is much to warrant the supposition that he was intent on something more than the control of the transit routes. The remark in the message that peaceable immigration, so highly advantageous to all concerned, was prevented by the filibustering march, might be looked upon as a very intelligible intimation of intentions, or at least wishes that extended much further, when one bore in mind the manifest-destiny doctrine and the experiments Mexico had made in Texas and California with this peaceable immigration. And even if Buchanan wanted nothing but control over the transit routes, would the slavocracy be satisfied with that, when the Union had a firm footing there in the tropics? But, if the slavocracy wanted more, was Buchanan the right man to meet them with an unconditional and irrevocable *non possumus*? The slavocracy really looked upon Walker's undertaking as if they supposed Buchanan was playing false. If this had not been the case, would he not have found means to prevent the escape of the filibuster, which was so disagreeable to him, and would he not then have plainly stated that the neutrality laws must give the government more extensive powers to guard against such occurrences in the future? It was certainly correct that Buchanan was not such a friend of slavery as to desire to strengthen it.

But it was just as certain that he would not refuse to do anything that seemed desirable, and at the same time practicable, simply because it would have that effect. And that he would not do so, in this case, was beyond all doubt; because, considering his whole way of thinking, he must have hoped that the Kansas question, which had been slumbering, would be awakened into life again by the fact that a prospect of compensation was here opened to the slavocracy. The fact that the millstone of the slavery question hung to the Central-American problem, as to all other problems of national politics, could not only not deter him from making a bold attempt to swim in the currents and billows of high politics, but it was an additional reason for him to make it, because he considered it possible, by so doing, to get rid of a great part of the burthen which threatened to drag himself and the democratic party to the ground, in his own country, and thus to destroy the Union.

We have now exhausted the questions of importance in constitutional history and in the development of the irrepressible conflict discussed in the message, for in the previous chapter the meagre data of the message on the doings in Kansas there received all their necessary completion; and the politico-constitutional utterances on them, in the meaning of the answer of August 15 to the Connecticut clergy and of the article in the *Union* of November 18, have been critically passed upon.

If now it be asked what were the results of the policy of the president during the first nine months of his administration, they may be thus briefly summed up: The confident hope of seeing realized his honest and ardent wish — that the slavery question would be banished from the world, or at least that it would be deprived for a while of its acute and domineering character — was not

fulfilled, but he was driven further and further from that hope; and the blame for this lay not entirely with the ever-active logic of facts. His own weakness, his own ambition, and his dependence on the slavocracy, which had become a second nature to him by habit and political calculation, as well as a complete want of understanding of the moral side of the slavery question, made himself, with busy hands, knit mesh on mesh of the fatal net which was destined to drag his party for almost a generation from the seat of power and plunge the country into the frightful depths of a four years' civil war. The thirty-fifth congress found marked out by Buchanan a broader plan for a collision of minds than any of his predecessors had presented to any other congress.

## CHAPTER IV.

## THE LECOMPTON CONSTITUTION IN CONGRESS.

Figures do not lie — provided they are correct. The proposition is unassailable; but, in its practicable application, it has, perhaps, more frequently led to wrong than to correct conclusions. The difficulty lies in this: that the figures must be not only right but rightly understood; and the right understanding of right figures is difficult in cases other than where one has to deal with long columns of figures which have to be combined in different ways. Correct rows of figures can never lie; but they frequently deceive, because they seem to make undoubtedly clear conditions and circumstances which, by their very nature, can find no adequate expression in simple figures.

Judged solely by the relative numbers of the two parties in congress, the democrats might look forward towards the legislative action of the new legislative period with really pleasant feelings. In the senate they could in no way lose the supremacy.<sup>1</sup> The effort to crowd them out of the White House had failed; and the house of representatives, in which they had been able to lay down the law to the republicans only with the assistance of the southern opposition, and therefore had met with so many severe defeats, was in their hands once more. On the very first ballot, their candidate, James L. Orr, of South Carolina, was elected speaker, by one hundred and twenty-eight against ninety-seven votes, of which the re-

<sup>1</sup>The ruling party had now a majority of ten (thirty-five against twenty-five), which would be increased to twelve as soon as the two vacancies — South Carolina and Texas — were filled.

publican candidate received only eighty-four. If they only had been united among themselves they would, therefore, have had the power to do whatever they pleased.<sup>1</sup> But on the very next day it became manifest that, in respect to one question, this precondition did not exist. This question cast all others in the shade, and hence all calculations of the probabilities based solely on the relative numbers of the two parties in congress were entirely worthless.

As soon as the president's message had been read, Douglas rose. He spoke only a minute, but among all the brilliant speeches ever made in congress it would not be easy to find one of a significance even approximately equal to the few calm words he spoke. "I have," he said, "listened to the message with great pleasure, and concur cordially with much the greater part of it, and in most of the views expressed; but in regard to one topic—that of Kansas—I totally dissent from that portion of the message which may fairly be construed as approving of the proceedings of the Lecompton convention."

This—the fact that the first blow aimed at the administration was dealt by Stephen A. Douglas and not by the republicans—was the omen under which the thirty-fifth congress began its labors;—this, and not the election of the speaker in the house of representatives. The democratic party itself had now to feel whether the power of Douglas's arm warranted the proud name it had given him. The "Little Giant" had certainly not become a Don Quixote, who, in company only of a Sancho Panza, set out, bent on adventure. He had won the name because he knew so well how to turn his party colors into a battle-flag. Not only Douglas himself, but the Douglas

<sup>1</sup> The *Independent* of November 26, 1857, divided the house into: All shades of democrats, 129; Free American and republican, 90; South American (all from the slave states but one), 15.

democrats, through the mouth of their leader, Douglas, refused any longer to serve the president and the slavocracy in the Kansas question so far as they intended to identify themselves with the Lecompton fraud. Even if Stuart, of Michigan, had not immediately joined in Douglas's declaration by showing that the Lecompton convention had overthrown the principle of the Kansas-Nebraska bill, no one could for a moment have harbored the slightest illusion in regard to this fact—a fact by means of which that declaration might, nay even must, draw after it consequences the import of which could not be estimated.

The gauntlet was immediately taken up. First and foremost, the future president of the Confederate States entered the lists in defence of the Lecompton convention. Jefferson Davis declared that, to question the right of the people to have a directly valid constitution given them by their delegates, was to deprive them of their sovereignty. Of course, the people might have reserved the decision to themselves; but it had not pleased them to do so.

If no better arguments than these transparent sophisms could be advanced, Douglas and Stuart would find no difficulty in giving the reasons they had promised for the stand they had taken. The two assertions in the second of Davis's propositions were simply not true; and, hence, so far as the decision of the question at issue was concerned, it was entirely indifferent whether the first proposition was, in itself, right or not. The governor had vetoed the bill relating to the calling of a constitutional convention because it did not provide that the constitution should be submitted to a vote of the people, and the legislature had passed the bill over the governor's veto. Hence it had pleased not the *people*, but only the *legislature*, that the final decision should not be reserved expressly to the

people; — the people had merely to elect delegates. The great majority of the people had not taken part in the elections; and their leaders had declared over and over, orally and in writing, that they would not do so, because the resolutions of the legislature did not correspond with their wishes or their will. Davis's assertions, therefore, were a complete misrepresentation of the facts; for the majority of the people had *ab initio* protested, in every way possible for them to protest, against everything relating to the Lecompton convention; but the administration, its organs and its entire party, inferred from the abstention of the people from the polls that they had entirely abandoned their right to complain, because they might have endeavored, by taking part in the elections, to send persons to the convention who would have framed a constitution in accordance with their wishes.

Davis was followed by Bigler of Pennsylvania, who, for the present, confined himself to stating that he agreed with the doctrines developed in the message just as emphatically as Douglas had rejected them.

Before even one republican could open his mouth, therefore, the declaration had gone forth to the whole country that Lecompton had split the northern democracy into two camps. Both still clung to the old shibboleth: "the great principle of the Kansas-Nebraska bill;" but it could henceforth serve to show only that one was not a republican; the answer to the further question, what one was, was first given by the battle-cry: Douglas! or Buchanan!

Now the republicans began to enter on the scene. Hale confined himself to placing the veracity and *bona fides* of the president in their proper light; but he did this in the most effectual manner by calling attention to how the message, in its discussion of the question submitted by the Lecompton convention to the people to be

voted upon, had grossly misrepresented the facts in the most essential point, by omitting in one place both the quotation-marks and the definite article before the word "constitution," and substituting for the latter the indefinite article — a ruse which to the superficial reader might seem perfectly harmless. Seward merely paid his democratic colleagues the compliment due them. The precedence in the debate, he said, unquestionably belonged to the gentlemen who stood on the platform of the Kansas-Nebraska bill, but who now turned against the president: for their speeches would be more effectual than those of the opponents on principle of this entire policy. This blow was more keenly felt than the best arguments and the severest denunciations, for its meaning was simply this: *tertius gaudet*. Trumbull spoke somewhat longer than any of the other senators, but he shattered with a mighty blow the whole foundation of the president's reasoning. Congress, he said, has certainly the right to admit a state into the Union, even when the territory has given itself a constitution in an extra-legal manner. But there can be no obligation, on the part of the Union, to admit a state, in such a case; and the present is such a case. The Lecompton convention never had a legal existence. The legislature could not give it such an existence; and congress had not only not given it a legal existence, but it had repeatedly refused, during its last session, to authorize the territory to adopt a state constitution. The question of the competency of the territorial legislature had been already raised under Jackson's presidency, and very clearly decided in the negative by Attorney-General Butler in an official opinion.<sup>1</sup> If the presi-

<sup>1</sup> "To suppose that the legislative powers granted to the general assembly include the authority to abrogate, alter or modify the territorial government established by the act of congress, and of which

dent did not recognize this authority he certainly would not deny another — that of James Buchanan, who, in the case of Michigan, had unreservedly professed the same doctrine.<sup>1</sup>

When, on the following day, after he had first taken precisely the same position as Butler and Trumbull, Douglas again called attention to this fact, the only answer Bigler could make him was that the Michigan question was of so old a date that the president might take refuge in the statute of limitations. The answer provoked no laughter, either because it was not intended as a witticism, or because the senate did not want to have wit take the place of argument in this question. But in what light did the facts distorted by Jefferson Davis appear, if the course of the legislature, on the whole question of the constitution, was outside the law? Everything relating to

the assembly is a constituent part, would be manifestly absurd. . . . It is not in the power of the general assembly of Arkansas to pass any law for the purpose of electing members to a convention to form a constitution and state government, nor to do any other act, directly or indirectly, to create such new government. Every such law, even though it were approved by the governor of the territory, would be null and void; if passed by them, notwithstanding his veto, by a vote of two-thirds of each branch, it would still be equally void." *Op. of the Att'y's Gen., II, p. 729.*

<sup>1</sup> The opposite side was aware that, with the question of the legality of the course pursued by the legislature, the president's whole argument stood or fell. Before Trumbull took the floor, Mason had said:

"If I understand by the president's message he means that the action of the Kansas convention, being a legitimate convention, be the action of the convention what it may, is to be respected by the congress of the United States, I not only agree with him, but I here aver that there is no jurist in the land who could not demonstrate, as a question of law, that the federal government was bound to respect it under the existing law — I mean the Kansas-Nebraska act; . . . his (the president's) position is entirely impregnable on that subject." *Congr. Globe, 1st Sess. 35th Congr., p. 7.*

it that had been done up to the present moment and that was yet to be done, in accordance with the resolutions of the convention, was destitute of legal force. Participation in the election of delegates, and in the vote on the slavery clause in the constitution, fixed for the 21st of December, weighed, in law, not a grain more than non-participation. If the will of the population was to be decisive of the resolutions of congress, congress had to consider both in precisely the same way — for there was not a question of law before it; it had to do only with a question of fact, and, so far as the latter was concerned, the truth could be arrived at only on this presupposition. Through the initiative of the pro-slavery party in the territory, the Kansas question had undergone a material change of character, to the disadvantage of the slavocracy. The irreconcilable contradiction between law and right, the unprincipled turning of which to account had alone made the continuance of the struggle possible to them, did not consist in the Lecompton question. It should have been decided solely in accordance with equity and expediency, because the law of February 19 was a law only in form and not in essence.

Douglas was thus thrust into a position which had the charm of novelty for him. Long habit had made it his second nature to treat the slavery question, at least so far as it concerned the territories, only with the arts of an unscrupulous logic. He was now relieved of this necessity. He could not make his attacks more effective nor defend himself better than by meeting the subtle, sophistical arguments of his opponents with unimpeachable facts — the plain arguments of healthy common sense and the feeling of justice of a man of honor who observes the fundamental principles of civil morality in politics. This part was not only new to him, but his entire past

made his consistent playing of it difficult, not to say impossible. What impelled him now to wage war against the president and the slavocracy? Was it solely, or at least mainly, his own convictions and fidelity to principle, or was it not rather the recognition of the fact that the political and moral convictions of his following, on whom his power chiefly depended, left him no other choice? If this was the case, how far might one expect to see him go? That he would, if it were at all possible, burn the bridges behind him, was self-evident. But would he stop on this side of the line, the crossing of which made his complete break with the slavocracy and the administration party of the north inevitable?

These were questions which were decisive of more than his own personal future. The fate of the democratic party depended on the answer given to them; and, hence, how he would defend his short statement of the 8th of December, in the speech announced for the following day, was of the greatest interest and highest importance.

The strained expectation of the senate and of the densely-filled galleries was enhanced by his first sentences. He began with the statement that, on closer examination, the language of the message on the Lecompton question was not, to his great satisfaction, as objectionable as he had thought the day before. The president had, indeed, signified his willingness to sign a bill admitting Kansas as a state under the Lecompton constitution. But the important fact must be considered, that he had expressed no approval of the course of the convention, and had not recommended congress to pass such a bill. Rather did the irrefutable reasoning of the message show that — whether he had wished to come to that conclusion or not — with his views and principles he could not accept that constitution.

By these introductory remarks Douglas evidently wished to show that he did not desire the struggle, but that he wished to hold fast to the hope that the breach might still be avoided. On the other hand, it could not be discovered from them whether he wanted to leave open for himself a line of retreat, or to facilitate, as far as possible, the return of the president. That was the decisive question; and, in the course of his speech, he gave an answer to it, with greater precision than democrats or republicans had been led to expect from his opening sentences.

Not only was Buchanan frequently mentioned in the most flattering terms, but the error into which he had fallen was declared to be very pardonable, since his attention in London had been too much engrossed by national interests of the greatest importance to occasion any wonder that he was not fully informed of the battle that had been fought, in the meantime, over the territories. He thus threw a thick and downy carpet over the sharp thorns that covered the way leading back from the Lecompton heresy to Kansas-Nebraska orthodoxy. The president's feet were to be spared to the utmost; but he was to be left no choice save to go the hard road, or assume all the responsibility for the schism from the steadfast in the faith.

The president's assertion that the Kansas-Nebraska bill meant, by the term "domestic institutions," with respect to which it guarantied the right of self-determination to the population of the territory, only slavery, was a "fundamental" and "radical" error; the bill had not made an exception of slavery; on the contrary, it had taken it out of the excepted cases in which the Missouri compromise had placed it, and brought it under the general rule. On this Douglas based his entire argument. It was vain to try to shake such a foundation, and just

as unshakable as the foundation itself was the demonstration raised upon it, that the Lecompton convention had trampled under foot the principle of self-determination in all non-national affairs, within the limits of the federal constitution, more systematically, boldly and perfidiously than it had ever before been done in the United States, and than had been hitherto supposed possible. He intentionally did not use slavery as an illustration. With revolting straightforwardness he declared that it was perfectly indifferent to him whether the slavery provision, as he expressed himself, was voted down or not. That, in view of the next presidential election, he meant to tell the slavery interest that it must not harbor the ridiculous suspicion that he had, because he said this, become suddenly infected with either abolitionism or even free-soilism, is unquestionable. But just as little did his whole past allow the slightest doubt that the statement was entirely true. In their want of understanding of the moral phase of the slavery question, Buchanan and he had still the same ground under their feet; only, Douglas, who was a coarser man, was entirely wanting in the purely humane feeling for the sad fate of the slaves — a feeling which, it certainly could not be denied, Buchanan possessed to a great extent. But, on the other hand, Douglas understood the nature of the slavery question, as a politico-party problem, incomparably better than Buchanan, and hence it was not of the least use to the slavocracy that the brutally cynical expression voting “up” or voting “down” the slavery provision was honestly meant. The doctrine of the message, he said, destroyed the platform of the party; if the party had defined the right of self-determination as it had now been interpreted by the Lecompton convention in its resolutions, the democratic presidential candidate, and

every man who sided with him, would have been rejected by the people. Douglas's term expired with the present session, and he made no secret of the fact that he desired to be reëlected. Hence, the sentence just quoted was personally applicable to himself; and it was, therefore, undoubted that he was irrevocably resolved to draw every consequence from it. His assurance, very generally given, that his readiness to sacrifice himself for the party had no limit except his principles and the requirements of honor—a limit which, evidently, might be overstepped if the preservation of the party demanded it—was certainly not given absolute credence to any great extent among the people. But even those who believed it could not, in view of its conclusion, consider that assurance an idle phrase in its relation to the case before us. How much weight was to be attached to the declaration that the party would not be worth preserving if it did not remain true to itself was a matter of indifference. The decisive words were the last: it cannot be preserved unless it remains true to its principles both in theory and practice, and fulfills its pledges. Many would have been less surprised if he had purchased the preservation of the party with his principles and honor rather than with his political future; but no one could take him for so weak a visionary as, contrary to his own declaration, to expect that, to gratify the slavocracy and the president, he would sacrifice his principles, his honor and his political existence, although fully convinced of the uselessness of the sacrifice.

On the following day (December 10) Douglas announced his intention to introduce a bill permitting the population of Kansas to hold a constitutional convention. He at the same time nailed himself fast, so to speak, to his declarations. The Washington correspondent of the

*Independent*, on the 12th of December, wrote to his paper, in his report on the speech: "Thus the 'beginning of the end' has come. From that hour the national pro-slavery party of the country may date its death."<sup>1</sup> The slavocratic press thus formulates its approval of this view: The traitor Douglas has awakened the moribund republican party to new life. But the conclusion it drew from this was: the result may be the disruption of the Union.<sup>2</sup> In this sentence, however, it again coincided with Douglas. He too had emphatically said, on December 16, that the game jeopardized the Union.<sup>3</sup> And they were joined

<sup>1</sup> *The Independent*, Dec. 17, 1857.

<sup>2</sup> The New Orleans *Bee* of December 19, 1857, said that the republican party, which, after the result of the elections in summer and autumn, "seemed on the brink of dissolution, has recently been galvanized into renewed symptoms of vitality and vigor. Just at the moment when a vigorous effort of loyalty on the part of the national democracy was alone required to quell discontent at the south, to utterly prostrate anti-slavery at the north, and to secure to Kansas a peaceful admission into the family of states, Stephen A. Douglas turns recreant to his professed faith, and leagues himself with the enemies of order, equal rights and the Union. . . . The consequences of this movement can scarcely be exaggerated, and for once we believe with the *Herald* that we have before us the inevitable contingency of a northern anti-slavery coalition in 1860 which will sweep everything before it as with the force of a whirlwind. . . . Douglas has done incalculable mischief by taking ground against Mr. Buchanan on this Kansas question — mischief that outweighs a thousand-fold his past service."

The New Orleans *Delta* of the same date: "Only the other day the hopes of the black republicans were down to zero; now they are apparently up to vernal heat. . . . Altogether, this Kansas imbroglio at Washington is big with tremendous results. It is an immense political fact. It is an algebraic equation containing a stupendous unknown quantity. The next presidency hangs upon it, doubtless, but infinitely more than the next presidency, perhaps."

<sup>3</sup> Congr. Globe, 1st Sess. 35th Congr., p. 50.

by the organs of the more radical wing of the republicans with the alarm-cry: "The Union is at stake!"

Often as the cry: "The Union is in danger!" had been sent through the country, it had never been hearkened to. The threatening of the south was as old as the constitution, nay, older, for the constitution would not have become what it did if some of the representatives of the south had not made use of such threats in the Philadelphia convention to carry out their wishes. But it was something new to hear the cry uttered in this key by a democrat of Douglas's stamp; that is, not as a means of compulsion to wrest further concessions in favor of the "peculiar institution," but as a rebuke and warning to the slavocracy. And something equally new was the peculiar sound of the echo from the republican ranks. It had not even the slightest accord with the defiant confidence with which it had become the custom of late years to mock at the terrible picture of the dissolution of the Union as an empty specter. The profound darkness that had lain on the eyes of the republicans seemed to be rent for a moment, as by a stroke of lightning. Lecompton is only a pretext, said the *New York Tribune*; the real object of the people by whom the president, in his blindness, allows himself to be misused, is the disruption of the Union, that they may erect a new confederacy on the foundation of slavery.<sup>1</sup>

<sup>1</sup> Letter of the Washington correspondent: "The president is deceived and is unwittingly lending himself to the purposes of men who are playing a deep and dangerous game. The southern authors of this Lecompton scheme care nothing for Kansas, which they know is lost to them. They are aiming at a dissolution of the Union and the formation of a pure slaveholding republic. They expect through civil war to drive the free states out of the confederacy, with the exception of Pennsylvania, and perhaps New Jersey, Indiana and Illinois." The leaders were resolved to remain in possession of the government, but they probably clearly saw that the republicans

Nothing less was on foot, chimed in the *Independent*; things may soon have reached such a pass that we shall need a second Jackson in the White House.<sup>1</sup> This was in such bold contrast with the traditional, theatrical thunder of the secessionists, that one might have supposed it a tactic feint, were it not that the democratic papers of the north had, with equal, sustained earnestness, and free from all exaggeration which might betray or excite a panic-like terror, fully confirmed the alleged facts and explained them in the same way.<sup>2</sup>

would win in 1860. This they wanted to prevent at any cost. "To this end, and with this view, they are pressing the Lecompton scheme upon the president. They expect and hope that its enforcement in Kansas will be resisted, and that a civil war will be the result. They expect through such a war to divide and conquer the free states and to drive the most obnoxious of them out of the Union. With the rest, or, at the worst, with the south alone, they calculate upon forming a confederacy in which the slaveholding class shall have the unquestionable supremacy, with nothing to check the expansion of its dominion over Mexico, Central America and the West Indies." The *N. Y. Tribune*, Dec. 21, 1857.

<sup>1</sup> The Washington correspondent of the *Independent* writes, on the 2d of January, 1858: "In my last, as in this, I have alluded to a secret disunion feeling here, which is taking form and shape for an emergency which it hopes to create. . . . They look to a disruption of the present Union and the establishment of a southern confederacy, as the grand panacea to cure all the abolition ills to which they are now heir by their federal connection; and when they have fully prepared the ground, the grand scheme will be attempted. The great body of the south, I am satisfied, are hostile to this crazy and fratricidal scheme. Yet they can be brought into line by some flaming manifestoes of their political leaders, as they have heretofore been in religious matters by their ministry. . . . We shall need the purity, the sternness and heroism of Jackson in the executive chair, unless the designs of these filibusters against their country's unity shall be thwarted." The *Independent*, Jan. 7, 1858.

<sup>2</sup> Thus, for instance, the Washington correspondent of the *Boston Post* writes: "I find that there are enthusiasts here, ardent worshippers of the 'Southern Cross,' who expect the early dissolution of this

All this, indeed, did not necessarily make it impossible that injustice was done to the southern radicals, or that their influence, in the White House as well as in the south, was overestimated. But, even if the situation were not as serious as it was thought to be, it became very serious from the fact that it was considered so. Above all, the breach in the democratic party could not be closed up. It mattered not whether the southern radicals would let Kansas go at no price, or whether they would use the Lecompton question as a lever to further their secessionist wishes. Douglas had as little pardon to expect from them in the one case as in the other. He had also become guilty of an unpardonable sin in the eyes of the president and of the administration democrats in the northern states; and it made no difference whether they still really found the unadulterated principle of the Kansas-Nebraska bill in the Lecompton programme, or considered it now as self-evident as in 1854 that the party basis in the territorial question had to be shifted if the slavocracy declared it to be a precondition of the preservation of the party, or even of the Union.

If Douglas had harbored any illusions as to the consequences which his conduct would have for himself, personally, a few days sufficed to dissipate them. As early as on the 21st of December he complained in the senate that certain people, but especially the entire press which depended on the administration, were endeavoring to

Union, and who dream of a southern empire, embracing the states south of Mason and Dixon's line, the republic of Mexico, the states of Central America, and the island of Cuba. . . . That portion of the southern democracy which favors an exclusively southern party is now in the ascendant; and it is under their counsels and to accomplish their purposes that a difference of opinion with Judge Douglas has been pushed to a personal and mortal quarrel." Printed in the *Independent* of Jan. 14, 1858.

cast him out of the party and to hunt him down, while almost every really independent democratic paper stood stoutly by him. He expressly exonerated the president from all participation in that guilt.<sup>1</sup> Many were rightly convinced that he did not believe this himself. If their convictions were well founded, he either had desired to keep the way open a moment longer for the possibility of Buchanan's conversion, or he had hoped, by the untruthful compliment,<sup>2</sup> to be able to move him to charm away the raging mutiny. He might have spared himself his pains in both instances: they could meet with no success in the latter case, because they must have been lost in the former. To induce Buchanan to become converted he would have been obliged to move the slavocracy to become converted; and as the conversion of the slavocracy, which had never yet been converted, was not to be thought of, the attacks on him could not be stopped when the first ebullitions of anger began to yield to sober reflection. The very opposite must happen and did happen. He was entirely right; it was a systematic hounding which could cease only when the game was bagged.

Douglas's fidelity to principle had never been subjected by the republicans, with such rigor and sagacity, to a historical test as it was now by the administration democrats. In the *Chicago Times*, which passed as his organ, an article was published in which it was alleged that the

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., p. 120.

<sup>2</sup> In a speech which he delivered on the 13th of October, 1860, in Milwaukee, he related that, immediately after his arrival in Washington and before the beginning of the session, he had an angry controversy with the president. The latter reminded him "that no democrat ever yet differed from an administration of his own choice without being crushed. Beware of the fate of Tallmadge and Rives." To which he is said to have answered: "Mr. President, I wish you to remember that General Jackson is dead."

Topeka party of Kansas had forfeited all right to say a word on the question of the constitution; the inhabitants of the Fiji Islands might be allowed to vote on the adoption or rejection of the constitution just as well as they.<sup>1</sup> It was said that Calhoun, the president of the Lecompton convention, informed his good friend Douglas, by letter, of the manner in which he intended to submit the constitution to the people, but that Douglas had left the letter unanswered, which could be interpreted only as a tacit approval of it. But the heaviest blow was dealt by Bigler's calling attention to the fact that the provision relating to the vote of the people had suddenly disappeared from the Toombs bill of the previous session, and this — which was not known before — in accordance with the resolution of a conference held at Douglas's house. Douglas's answer to Bigler was that he had not attended the conference, and therefore was not responsible for its resolution. But his answer did not parry the blow, as he could not claim that he had not been informed of the resolution, and had not, like many other senators, remarked the alteration. Hence, he further declared that he had not referred to it in the debate, because, in his opinion, all that could be inferred from the silence of the bill was that a vote of the people was a matter of course. But then it was utterly undiscoverable why he had taken up an express provision on the subject into the Minnesota bill. Toombs's assertion that the provision had gotten into his bill solely because he had cut the formal part, which was, as a rule, worded in precisely the same way, out of an old printed territorial bill, and had, without closer examination, affixed it to the part drafted by himself, made the matter worse rather than better for Douglas. Toombs added that, after his attention had

<sup>1</sup> See Congr. Globe, 1st Sess. 35th Congr., p. 2551.

been drawn to it, he considered the striking out of it in that conference a matter of course; for the bill had not provided for a second popular vote after the election of delegates, and hence was not in harmony with the ratification clause.<sup>1</sup> This was about the very reverse of what Douglas claimed to have considered a matter of course.

But what would be gained if Douglas could be shown that his fidelity to principle was much more like a worn-out and tattered garment than an impenetrable coat of mail? The less his convictions were the real reason of his opposition, the greater would be the pressure of public opinion, forcing him to play the part of an inflexible knight of principle, although he could not but see that the knight of principle, Douglas, would overthrow Douglas, the presidential candidate. His thought, will and action obtained significance only because of the masses who stood behind him. The more forcible the proof adduced that he changed his principles as he changed his clothes, the more undoubted it became that he was now not the mover but the moved, and that, therefore, the slavocracy and the administration would have to give up their Lecompton policy, unless they were willing to pay for the attempt to carry it out with the permanent disruption of the democratic party.

What had happened, however, in the meantime in Kansas excluded all hope that they would change their course in the slightest particular. The president immediately followed the information of the convocation of the legislature by the removal of Stanton. As a reason for this, it was expressly stated that the latter, by convoking the legislature, had cast another apple of discord among the people, and that the step was "directly at

<sup>1</sup> "The bill being incongruous as to that purpose." *Ibid.*, App., p. 127.

war, therefore, with the peaceful policy of the administration." Denver, the Indian commissioner, was put in his place. Walker did not wait to be told to go. He sent in his resignation on the 15th of December, defending his resolve in an exhaustive document, which, while extremely considerate in form, exposed not only the perversity but also the untruthfulness of the president's whole Kansas policy in all its nakedness. It devolved on Cass, as secretary of state and as the attorney of that policy, to refute Walker's demonstration — a lamentable part for the father of the doctrine of popular sovereignty to play. But he found himself so well adapted to it that he did not even hesitate to smite the truth in the face. With Buchanan's letter of the 12th of July to Walker before his eyes, he boldly asserted that the president had never entertained or expressed the opinion that the convention was bound to submit any part of the constitution, except the provision relating to slavery, to a vote of the people.<sup>1</sup>

<sup>1</sup> Cass to Walker, Dec. 18, 1857. (*Ibid.*, p. 134.) Buchanan himself had avoided so direct an untruth in the message. He had looked for forms, by which he concluded, so to speak, a compromise with the truth: "I took it for granted that the convention of Kansas would act in accordance with this example (of the ratification provision in the Minnesota bill), founded, as it is, on correct principles; and hence my instructions to Governor Walker, in favor of submitting the constitution to the people, were expressed in general and unqualified terms." He went on: "In the Kansas-Nebraska act, however, this requirement, as applicable to the whole constitution, had not been inserted, and the convention were not bound by its terms to submit any other portion of the instrument to an election, except that which relates to the 'domestic institution' of slavery."

But, in the first place, the phrase "by its terms" was confronted by the express statement, in the letter of July 12, that it was required by the "principle" of the Kansas-Nebraska bill — that is, of popular sovereignty; and, in the second, the law said "domestic institutions," not "domestic institution." If Buchanan now wished to justify the denial of the principle by appealing to the wording of the

By the removal of Stanton for the reasons assigned, what Douglas had declared to be so important in the introduction to his first speech lost all support; it was now certain that the president desired the admission of Kansas, under the Lecompton constitution, although he had not plainly said so in his message. But little or nothing was gained towards the realization of this desire by the removal of Stanton. The administration again, to use a homely saying, locked the stable after the horse had been stolen. The summoning of the legislature to meet could not be recalled; and it was clear that that body, in accordance with his demand, would not only very gladly submit the entire constitution to a vote of the people, but would go much farther, in order to obstruct the road of

law, the first condition was that he should not change the wording in an entirely arbitrary way. In one and the same breath he appealed to the wording of the law, and endeavored to prove that while it used the plural it meant the singular.

In the annual message of December 6, 1858, he had resort to another evasion, which served no better to get him out of the dilemma, but which gave the lie directly to Cass.

"It is true that, as an individual, I had expressed an opinion, both before and during the session of the convention, in favor of submitting the remaining clauses of the constitution, as well as that concerning slavery, to the people. But, acting in an official character, neither myself nor any human authority had the power to rejudge the proceedings of the convention, and declare the constitution which it had framed to be a nullity." *Congr. Globe*, 2d Sess. 35th Congr., App., p. 1.

The letter of July 12 to Walker was not written by him "as an individual," but as president; and even if he did not have the power of which the second sentence spoke, it did not follow that he could do nothing whatever. Even if he had spoken only as an "individual," he not only should but must — unless he had changed his views — call upon congress "to rejudge the proceedings of the convention," by refusing admission to Kansas. The assertion now made, that the Kansas-Nebraska bill did not allow this, was simply irreconcilable with the letter of July 12.

the Lecomptonists. Over Stanton's veto, it repealed the laws of the preceding legislature relating to the Lecompton convention and the militia, formally adopted a "joint resolution" protesting against the Lecompton constitution, and calling upon congress not to admit Kansas, with that constitution, as a state, and asked, in a "concurrent resolution,"<sup>1</sup> for its admission under the Topeka constitution, which it re-affirmed.<sup>2</sup> The vote of the people on the whole constitution was fixed for the 4th of January—that is, for the day on which, according to the resolution of the Lecompton convention, the elections to state offices were to take place. The majority of the anti-slavery party in the legislature, adhering to their previous policy, decided not to take part in these elections. This resolution, however, was subsequently reversed by the minority. At the eleventh hour they called upon the party to vote for its candidates.

On the 21st of December the vote on the Lecompton constitution ordered by the convention was cast. The result, according to the official returns, was: Six thousand and sixty-three "for the constitution with slavery" and five hundred and seventy-six "for the constitution with no slavery." Even if not a single illegal vote had been cast, the real will of the people could not be ascertained from these figures, because those who would have nothing to do with the constitution, in the one form or the other, had not voted. Among them were people who, openly and zealously, did their best to make Kansas a slave state, but who were not willing to purchase that result by sacrificing the principle of the right of self-deter-

<sup>1</sup> This form was chosen in order to dispense with the necessity of the approval of the executive.

<sup>2</sup> "Re-affirming" is the expression used in the *Independent* of December 31, 1857.

mination, the supremacy of the law, justice and personal honor.<sup>1</sup> Hence, under the specified presupposition, not even the strength of the pro-slavery party could be inferred from the vote of the 21st of December. This was all the less possible, as the opponents of the Lecompton swindle among the partisans of slavery were an evanescent number as compared with the number of the notoriously illegal votes which were cast, or counted without being cast. The pro-slavery party were entirely certain of a majority, because no anti-Lecompton vote could be cast on that day. But, considering the vote of the 4th of January, they must have attached great importance to a large figure. At least one-half of the six thousand and odd votes was demonstrably illegal.<sup>2</sup> The wire-pullers had, therefore, lost none of their audacity. Their corrections, notwithstanding, remained far behind the requisite measure. On the 4th of January, ten thousand two hundred and sixty-six votes were cast against the Lecompton convention.<sup>3</sup> However the question of

<sup>1</sup>A meeting of the democrats of Douglas county, in Lawrence, had, on the 13th of December, protested against the admission of Kansas under either the Topeka or Lecompton constitution, because neither answered the wishes of the people. On the 24th of December, the democratic territorial convention at Leavenworth followed this example. The *Leavenworth Journal* expressly advocated these resolutions, while it at the same time declared that it could not cease favoring making Kansas a slave state. The resolutions of the two meetings and the article of the *Leavenworth Journal* are printed in the *Congr. Globe*, 1st Sess. 35th Congr., App., pp. 175, 176.

<sup>2</sup>See the details in *Congr. Globe*, 1st Sess. 35th Congr., pp. 389, 424, 480; App., p. 296; Rep. of Comm., 35th Congr., 1st Sess., vol. III, No. 377, pp. 111, 205.

<sup>3</sup>*Sen. Rep.*, 35th Congr., 1st Sess., vol. I, No. 82, p. 59. One hundred and sixty-two votes were cast for the Lecompton constitution: one hundred and thirty-eight "with" and twenty-four "without" slavery. These figures, however, have no significance, as an order had been issued to abstain from voting.

the formal legality of this voting might be answered, the fact was irrefragably established by it that an overwhelming majority of the population did not want the Lecompton constitution. If congress admitted Kansas as a state under that constitution, it would do so against the will of the people, and have to bear the entire responsibility of that enormity; for it would not have been obliged to admit it, even if the Lecompton party had been in the majority and had acted *optima fide* from first to last.

Although the Douglas democrats and the republicans had gained a powerful weapon on the 4th of January, it was very doubtful which party would ultimately derive the greater advantage from that day. They had, indeed, taken part in the elections to state offices only under protest; but then the fact remained that they had participated in them. By so doing, they had again given aid to the administration democrats in the formal question. "You have yourselves made your choice under the Lecompton constitution, and thereby rendered nugatory all objections to the action of the convention and to the result of the voting of the 21st of December;" — the earlier history of the troubles sufficiently proved with what effect this argument could and would be turned to account. This consideration, as has been already mentioned, had determined the legislature to declare in favor of the old policy of abstention from the elections. But as the minority did not submit to this resolution, it would have been better if it had not been drawn up at all. On the one hand they exposed their flank to an attack on the formal question — a fact from which a surrender of the principle might be construed; and, on the other, they lessened the strength of the vote by contradictory orders. If the diminution in the number of votes caused thereby

happened to be large, it was to be feared, considering the skill acquired by their opponents in the correction of the voting-lists, that they would figure out a victory for themselves. That they would attempt to do this was as good as certain; and even if unsuccessful, the moral effect of the large majority of votes against the Lecompton constitution would necessarily be greatly weakened if it seemed for a moment doubtful which party had been victorious in the state elections.

The Lecompton constitution provided that the president of the convention, to whom the election lists were to be sent, should count the votes within eight days. Calhoun fulfilled this duty to the letter. After an agreement of the chairmen of the two houses of the legislature, he made the count, but neglected to make its result known. It had to remain undecided whether his associates, spite of the zeal with which they had worked to complete the poll-lists of Delaware Crossing, Kickapoo and Shawnee,<sup>1</sup> had not done enough, or whether they had accomplished so much that he thought it prudent not to expose this newest illustration by the law and order party of the principle of popular sovereignty in too glaring a light, so long as it could still be hoped to reach the end in some other way. He left Kansas to itself, and went to Washington. Still, even there, it could not be ascertained what further he intended to do about the elections of the 4th of January. He now gave one answer and now another, but did nothing. Hence, for the present, the statement was presumably true that he was resolved to

<sup>1</sup> The mode of procedure was very simple. The official certificate at the end of the list was cut off, and after the interpolation of a number of sheets, with names chosen at will, affixed to it again. The poll-lists of Shawnee were, for the sake of greater convenience, taken over the border to Missouri. See the details in Douglas's speech of March 2, 1858. Congr. Globe, 1st Sess. 35th Congr., p. 920.

issue no certificates of election until congress had resolved on a ratification of the Lecompton swindle.

The probability, however, that it would do this seemed, at first, to grow continually less, not greater. Not all the representatives of the south even cared to fight for the interests of the slavocracy with such weapons. Among the "South Americans," in whom the interest of party was not associated with the pressure of the slavocratic interest, there was more than one who rebelled against the foul bargain. Outside of congress, the combined pressure of both did not prove always sufficient. Many an influential southern democrat protested loudly, and even some democratic papers had the courage to do the same.<sup>1</sup> Moral indignation, indeed, was not always the sole ground of this opposition. "Douglas and his associates," wrote a Kentucky democrat to the *Bardstown Gazette*, "are undoubtedly right; but, even if they are defeated, there is no reason why the party should be ruined by the Lecompton matter, provided they are not put out of the party because of their opposition; but, if this last should happen, the party, and with it the Union, is lost."<sup>2</sup> But this reasoning of the opposition could not fail effectually to strengthen the courage of the politicians among the Douglas democrats, whose own ballast of moral principles was not quite full weight, while the moral indignation of decided democrats like Henry A. Wise<sup>3</sup> was the

<sup>1</sup> Some of these utterances of the press are printed in Congr. Globe, 1st Sess. 35th Congr., p. 1239. Senator Bell, representatives H. W. Davis, Harris and Ricard of Maryland, Marshall and Underwood of Kentucky, and Gilmer of North Carolina, went with the opposition in congress. The latter, however, subsequently voted for the English bill, because, as he said, of the pressure his southern friends exercised on him.

<sup>2</sup> Congr. Globe, 1st Sess. 35th Congr., p. 1237.

<sup>3</sup> See his letter to the Lecompton convention in Philadelphia. *Ibid.*, p. 1238.

best means to open the eyes of that part of the democratic masses of the north, who could not be reckoned among the "voting cattle," to the knavish mendacity of the Lecompton policy.

How powerfully the spirit of rebellion stirred among the masses, the slavocracy could infer from the fact that the tone of the politicians in congress grew continually louder.<sup>1</sup> This was a sure sign that they supposed they were swimming, not against, but with, the stream. Direct proof that they were not mistaken was soon found. In Concord, the democratic state committee of New Hampshire adopted resolutions based entirely on Douglas's views.<sup>2</sup> A resolution of the democratic state committee of Indiana, adopted by a vote of three hundred and seventy-eight against one hundred and fifteen, declared that the people of every territory had the right to vote on the constitution drafted by a constitutional convention.<sup>3</sup> The democratic legislature of Ohio declared that Buchanan "still" had their "entire confidence," and that his administration could count on their cordial support; but they requested the representatives and instructed the senators of the state to vote against the admission of Kansas under the Lecompton constitution.<sup>4</sup> In Illinois, as a matter of course, the great majority of the democrats stood by Douglas, and the German democratic press, almost without exception, went with him.<sup>5</sup> Hence, a new trial of the policy "to agree to disagree,"

<sup>1</sup> S. S. Cox, of Ohio, the first democratic orator of the house, had characterized their course as "a gross breach of faith." *Ibid.*, p. 54.

<sup>2</sup> *The Independent*, Jan. 7, 1858.

<sup>3</sup> *The Independent*, Jan. 7, 1858.

<sup>4</sup> See the resolutions, *Congr. Globe*, 1st Sess. 35th Congr., p. 428.

<sup>5</sup> The *States* asserted that out of over one hundred papers only three, which had a place in the state crib, sided with the administration on this question. See *Ibid.*, p. 1237.

or an abandonment of victory in the presidential election of 1860, seemed to be the only alternative.

The pressure which the knowledge of this fact exercised on Buchanan was great; but the counter-pressure of the slavocracy was not weaker. He became more and more convinced that the end of the supremacy of the democratic party would be the end of the Union. But if he decided in favor of anti-Lecompton, the disruption of the party was more certain than if he made Lecompton the party shibboleth; and if he required that neither Lecompton nor anti-Lecompton should be inscribed on the banner of the party, but that full liberty of conviction in respect to this question should be allowed, he would be sitting between two stools, and would come to the ground. The slavocracy took as decided a position against this as against anti-Lecompton, because the result would be the same to them, since the republicans and the anti-Lecompton democrats together had a majority in the house of representatives. "He that is not for me is against me." The development of the irrepressible conflict, incessantly promoted by the force of facts, made this text more and more, as the years rolled by, the motto of the slavocracy, up to which they would rigidly live and must live. "The whole power of this government has been exercised in Kansas to crush out southern rights, break down the institution of slavery there, and sacrifice the south upon the altar of party."<sup>1</sup> Such were the thanks which Shorter, of Alabama, now expressed to the present and to the last president for their devotedness. Buchanan did not need to fear that many would soar to this height of absurdity. But, in the form of this foolish indictment, Shorter gave him notice that the slavocracy would not permit the appeal to his former

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., p. 772.

merits to have any force; and this notice was repeated, day after day, in the senate and the house. Its formulation was now severer and now milder; as a rule only suggestive, with more or less indulgence; still, not unfrequently very clear and direct. But, under every cover, as a bitter kernel, lay concealed the simple sentence: Choose! we are resolved not to yield a hair's breadth, even if it should come to extremes in this matter.

The republicans themselves had, at the opening of the session, suddenly begun to see the threats of secession in a very different light from that in which they had previously looked at them; and how could these declarations, which were steadily accumulating and growing more intense, fail to make a powerful impression on Buchanan? When he commenced his presidential career he was allowed to blow hot and cold at the same time; that is, he was left at liberty to use northern phrases when he thought that by employing them he could most easily and most surely reach southern ends. But now the state of things had greatly changed. With Lecompton, said Cochrane, of New York, the south has made "the last desperate throw of the dice."<sup>1</sup> This was true; and whoever wished to use the loss of Kansas as pretext for the disruption of the Union, or really believed that its loss would be the death-blow of the slavocracy, should, on that account, have demanded not only great energy in action, but also entire clearness in speech. The radicals' own declarations were as concise and definite as possible. If the Union is to be preserved, said Gartrell, of Georgia, on the 28th of January, Kansas must be admitted with the Lecompton constitution with the slavery clause.<sup>2</sup> Even if Buchanan had seen in this only an idle threat,

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., p. 425.

<sup>2</sup> Ibid., p. 393.

the execution of which the most hot-blooded "fire-eater" would never dare to attempt, he must have inferred from it that he would be forced, under any circumstances, to take a very decided position. However, it could, at most, still seem questionable to him whether the radicals would succeed in carrying out the secessionist programme. He could not doubt the seriousness of their will to execute it. The confidential letters which furnish the documentary proof of this<sup>1</sup> he certainly was not acquainted with, so far as their wording is concerned; but his southern cabinet members and other friends scarcely served him so poorly as not to let him know that such letters went from Washington into the states.

But even this was not needed. In the utterances of the press there were to be found, side by side with the

<sup>1</sup> Thus, for instance, Quitman writes on the 1st of February to John Marshall: "I predict the (Lecompton) constitution will be rejected. If the administration falters in the least, and I fear a little it will, our defeat is certain. Public sentiment comes down to us from the north and west like a Mississippi flood. Few, I think, will be able to stand it. Well, suppose we carry the constitution. National democracy will almost cease to exist in the free states. Every man who votes with us will be swept off at the next election. The black republicans, or the anti-slavery party under some other name, will sweep every free state at the next contest for president. Parties will become purely sectional, and no remedy left to us of the minority but separation. On the other hand, should the constitution be rejected, the south must regard the plighted faith of the northern democracy violated. It will assure us that no more reliance can be placed on them to aid in protecting our rights; that national democracy is worthless. We must also see in the act a fixed and inexorable determination on the part of the majority never to admit another slave state. . . . Who can doubt what, under such a state of things, the south ought to do? If she waits for the border states — Virginia, Maryland, Kentucky and Missouri — or either of them, she will never act, but gradually become the willing slave of an insatiate master. The cotton states must move first. The others would then have to follow." Claiborne, *Life and Correspondence of J. A. Quitman*, pp. 252, 253.

old-style bombastic tirades which, from too frequent repetition, made no impression, a great many completely sober arguments that undeniably bore the stamp of conviction, and could not be refuted.<sup>1</sup> The American people had, in consequence of the circumstances surrounding them, hitherto been obliged to live so intensively, in order to satisfy their material wants, that the development of the historical sense in them had remained surprisingly behind their intellectual development in other respects. Only in the light of accomplished facts did numberless otherwise remarkably clear minds begin, very gradually, to perceive that, with the general development of things, the history of the slavery question had, of necessity, to ever grow more and more out of the legal formulas by which it had been possible to settle it in the constitution two generations before, and why it had to grow out of them. Hence, otherwise clear and acute thinkers were little or not at all open to arguments on the question of secession, based on this historical development of the sectional problem of slavery in a democratic union consisting of states with equal rights. But the man who was as much inclined as Buchanan to consider all the arguments of the slavocracy well founded, must, even when his thought could not follow the convincing logic of this reasoning, have been made instinctively to feel from them that Kansas was really a vital question to the slavocracy, because, in the nature of things, the maintenance of its supremacy was the precondition of its existence in the Union.

<sup>1</sup> See, especially, an article in De Bow's *Weekly Press* of Jan. 16, 1858. The stress there is laid on this: "that the loss of Kansas to the south would involve the loss of Missouri; and the loss of Missouri would destroy the moral as well as political prestige of the south, and invade the integrity of their institutions. The moral prestige of

These arguments were not, indeed, new. It had already been proven, in precisely the same way, that for the slavocracy, with which the southern states had allowed themselves to be more and more completely identified, there was but one alternative; and still the Union had been maintained. Spite of this, however, one could not now say: Words and nothing but words! The legislature of Alabama had unanimously adopted resolutions making it the duty of the governor to order elections to a state convention, if congress refused to admit Kansas as a slave state, under the Lecompton constitution;<sup>1</sup> and the democratic state convention of Texas called upon the legislature to charge the governor to appoint delegates to a convention to be called of the slave states.<sup>2</sup> These were not mere words — they were acts; and Buchanan certainly attached more weight to them than to all the speeches made and articles written. But the slavocracy had, before this, gone as far as these preparatory acts, and even a step farther, and still the storm-cloud rolled by without discharging itself on the country. The same words and the same acts, however, have not always the same import. In the most essential point, the circumstances were now entirely different from what they had been in all earlier struggles, and hence all conclusions drawn from the supposition that analogous cases existed were unwarranted. Hitherto the slavocracy had always, with the assistance of the democrats in the northern states, been victorious in the principal matter, and there-

states, like that of individuals, once destroyed, no earthly power can restore; and the integrity of state establishments, like the chastity of woman, once subjected to invasion, continues at the will of the despoiler."

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., p. 770.

<sup>2</sup> Ibid., p. 816.

fore had no occasion to go beyond words and preparatory acts. Now, on the contrary, a part, and presumably by far the greater part, of the democrats of the northern states, gave notice to the slavocracy that they would not swerve from the declaration they had made in 1854, viz.: that the limits of the concessions which they would make or could make had been reached in the Kansas-Nebraska bill; and if they were — as up to the present they seemed to be — irrevocably resolved to make their word good, the slavocracy would not only be defeated on this question, but would have nothing to hope for in the future. Hence, even those politicians of the south to whom secession, on account of Kansas, seemed criminal folly, might very well be of the opinion that the remaining of the slave states in the Union must be made to depend on the decision of the Kansas question.

As Buchanan, considering his whole way of thinking and his entire political past, must have looked at the matter, the pressure to which he was exposed from the south was, therefore, not only — as was said above — at least as great, but much greater, than that from the north. Besides, in the meantime, the Nicaraguan question had reached a temporary settlement, which must contribute to depress the scale on the side of the south.

On the 24th of November the "Fashion" arrived in safety before San Juan del Norte. As it saw the United States man-of-war "Saratoga" lying there, it did not enter the harbor until the following day, after it had landed the filibusters at another point. It had been noticed the day before by Fr. Chatard, the commander of the "Saratoga," and had excited his suspicion. He, therefore, sent a boat to examine its papers, which, however, were found to be in due form. Suspicion, indeed, became a certainty; but still Chatard thought that he

should do nothing or could do nothing. The only result of a conference, for the purpose of which Walker came on board the "Saratoga," was the order to take his ship away from Scott's building, because it was American property.<sup>1</sup>

Commodore Paulding had a different idea of his duty. He did not begin by the investigation of subtle questions of international law, but confined himself to the notorious facts. When Walker took forcible possession of Fort Castillo, confiscated merchandise and steamships, shot people down in his incursions and carried them away as prisoners, the commodore, with his prosaic notions of honor, deemed these doings acts of "rapine and murder."<sup>2</sup> On the 7th of December he ordered the "general" and his companions to lay down their arms and to repair to the ship, to be designated by him, to be carried to the United States. Walker protested, but obeyed.

On the 4th of January the senate requested the president to transmit to it the papers relating to the affair. Buchanan sent them to that body on the 7th, together with a message.<sup>3</sup> The latter began with the declaration that Paulding "had committed a great error," but that his motives were unquestionably pure and patriotic. The first of these assertions was not supported by an appeal to international law, but was based on the further one that the commodore had arbitrarily gone beyond his instructions. Although this last could not be called in question, it needed a commentary, which made the matter appear in no favorable light for the administration. Paulding himself declared that he was "sensible of the respon-

<sup>1</sup> Chatard's Report of Nov. 28, 1857, to Paulding. Sen. Doc., 35th Congr., 1st Sess., vol. I, No. 13, p. 16.

<sup>2</sup> Report of Dec. 15, to Toucey. Ibid., p. 27.

<sup>3</sup> Statesm. Man., III, pp. 2249-2252.

sibility he had 'incurred.' " He, therefore, admitted that his instructions did not expressly authorize him to do what he had done. But while he stated that he had gone beyond the letter of his instructions, it appeared from his report that he was convinced he had acted in entire accordance with their spirit. His right to do so, however, could not be bluntly and absolutely denied. Davis had not been censured when he—in a less rude manner, indeed—had done essentially the very same thing, *i. e.*, when he had arrested Walker and shipped him away; Chatard, on the contrary, was disciplined because he had not given chase to and captured the "Fashion." Besides, Lieutenant Almy had, with the utmost precision, asked to be instructed whether he should capture a filibustering ship, if he found one in a Central American harbor. Toucey answered neither yes nor no, but only repeated (October 12th) that the landing of crews or arms in Mexican or Central American harbors should be prevented by force; that is, he actually refused to give the unambiguous instructions asked for. But in what consisted the difference, in international law, between the employment of force in the harbor of a foreign, friendly power and on the adjacent shore?

The president passed over this question in silence. Nicaragua alone, he said, had a right to complain; but Paulding had rendered it a great service, and it certainly would not do so. This was true; but the suspicion might arise that the president did not feel unmingled satisfaction at the fact. Why did he not say that Yrizarri, as early as December 30th, had expressed the lively gratitude of the three governments he represented.<sup>1</sup> Would he have preferred to have been able to base the blame put on Paulding on complaints made by Nicaragua? No one

<sup>1</sup> He calls special attention in his note to Cass to this, that "the point from which Commodore Paulding forced away those bandits

could have objected to the declaration: The commodore's course in contravention of international law was not authorized by the government, and the government disavows it. But, on the other hand, a censure before the whole country on account of his exceeding his instructions, by which act he rendered a friendly state a great and fully-acknowledged service, and at the same time accomplished what, according to the orders of his own government, should have been done before, in another way, could be justified only on condition that the form was considered more important than the matter. Did the message wish to allege this, on the principle that the exceeding of instructions is almost unavoidably attended by bad consequences? In this concrete case, none could be mentioned. Could it not or would it not do so? The filibusters, it said, could certainly not complain in the name of Nicaragua. But whether they could not do so in their own name, it did not say. As it gave information that the marshal had been dispatched by the secretary of state with an order that the government could not look upon Walker as a prisoner, this must have been taken to be the opinion of the president. That only the courts could decide on Walker's guilt or innocence was unquestionably true. But was not the government bound to indict him after it had ordered its men-of-war to give chase to him on account of a breach of the neutrality laws? Did he become guiltless in its eyes simply because he came into Paulding's power through the exceeding by the latter of his instructions?

All these obscurities and contradictions could find an unforced explanation only on this assumption: With Buchanan consideration for the slavocracy was all-con-

. . . is an almost desert one, on which there exists no Nicaraguan authorities that could have managed the apprehension of these felons."

trolling; for the slavocracy, who believed their interests injured, looked upon the defense of those interests as the first duty of the president, and left him no alternative but to disavow Paulding or let them pour the overflowing vials of their wrath upon his own head.

Although this was for Buchanan an alternative without a choice, it required no little skill to conjure the threatening storm. We have already shown how greatly Walker's expedition grieved Buchanan, because it thwarted his own policy. Hence Paulding had rendered him also a great service, and he now over-estimated it, as it could not yet be foreseen that the expedition, notwithstanding its quick and lamentable end, would partly directly and partly indirectly cause the rejection of the Cass-Yrizarri treaty. The problem, therefore, that Buchanan had to solve was how to disavow Paulding, and at the same time to turn to account the fact that the "grave error" he had committed had again cleared the way for the carrying out of his policy. This he tried to do by, on the one hand, taking refuge behind an appeal to Paulding's instructions, and by the proof that he had a right to, and was obliged to, pursue the filibusters until they were before the harbors of Nicaragua; and, on the other, by further amplifying the short sentences of the annual message, which were intended to prove that filibustering enterprises could not open up the way of the starry banner to Central America, but must, on the contrary, obstruct it.

The claim of the president that the "Americanization" of Central America was a natural necessity found a loud echo in both houses of congress;<sup>1</sup> but the slavocracy did

<sup>1</sup> In the Report of the House Committee on Naval Affairs made by Bocoock on the 3d of February, 1858, we read: "Doubtless in good time, whatever may become of Walker, that country (Central Amer-

not allow themselves to be convinced that the promotion of that process, by the means of force, such as Walker had recourse to, was against their interests. While the republicans called Buchanan to account because he declared Paulding's meritorious act a "grave error," the radicals of the southern states pressed him still harder with the proof that he had given these important-sounding words no palpable tenor, and that his policy had warranted the commodore in thinking that he was carrying out his ideas. At the same time, spite the severity of the tone they assumed, it was very apparent that they had, in their own opinion, imposed a great restraint upon themselves. What determined them to do this could not be doubtful, and was frankly declared in the letters of prominent leaders which afterwards saw the light. Kansas was, at the time, much more important to them; and they, therefore, showed indulgence to the president in the Nicaraguan question, in consideration of his siding unreservedly with them in the Lecompton question.<sup>1</sup>

ica) must and will be Americanized. . . . Whether this is to be brought about by the sudden action of our government in acquiring possession of it by treaty, or whether the work is to be done by the healthier, if slower, process of gradual immigration from our borders: whether, when Americanized, it is to constitute a part of this republic, or whether another great federative system is to be created on our southern borders," was not to be examined now and here. Rep. of Comm., 35th Congr., 1st Sess., vol. I, No. 73, p. 7.

<sup>1</sup> A. H. Stephens writes, on the 3d of January, 1858: "The Walker and Paulding embroglio just now embarrasses us. Our sympathies are all with the filibusters. We do not agree with the administration on the Central American question; but if we denounce it, as we feel it deserves to be, we endanger their support of our views of the Kansas question. This we fear. The strength of that question in the north lies in its being an administration measure; but if we of the south oppose the administration on one question, it affords a pretext for men of the north to oppose it in another, and yet be good

If the republican papers were rightly informed by their Washington correspondents, Buchanan did not immediately and without reservation accept this bargain; but he thought that by acting thus he was rendering a service to the slavocracy. On the 22d of December, Douglas had ventured the prophecy that within sixty days he would be again recognized as an orthodox democrat, because the question would appear to the gentlemen who now excommunicated him in a very different light when Kansas presented them the Lecompton constitution without the slavery clause.<sup>1</sup> The expectation that this would happen was not, indeed, fulfilled. But had not

party men. In this way the question embarrasses us." Johnston and Browne, *Life of A. H. Stephens*, p. 328.

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., p. 140.

And in a letter of Quitman to John Marshall dated February 1, 1858, we read: "At the commencement of the session, we came here to force a test upon Walker's administration of affairs in Kansas, and to compel the administration to approve or disavow his leading acts. Before that could be matured, however, we learned that there would be a formidable defection from the northern democracy, on the pretense that the (Lecompton) constitution should have been submitted to the people. Mr. Buchanan took ground for the constitution, not, however, without hesitation and apology, but still his position, *quoad hoc*, was for us. This put an entirely different phase upon the matter, and we determined to adjourn our complaints against the president for his support of Walker, up to his last act, until the controversy between northern democrats should be determined. While the results of the proceedings in Kansas were doubtful, and while this northern controversy was pending, our best policy was to make no final issues. You will see, from the representations, why we of the extreme state-rights wing were quiet, and presented no ultimatum. When the neutrality and Paulding questions came up, we were obliged, for the sake of principle, to come out; but, aware that the great question was still before us, we were as moderate as possible. We wished to give the president no reason for shifting his position on the Kansas constitution." Claiborne, *Life and Correspondence of J. A. Quitman*, II, p. 251.

the vote of the 4th of January turned the edge of the weapon forged by the slavocracy against themselves more dangerously than ever? Even if all consideration were refused the vote on the constitution for the well-known formal reasons, would they not have prepared a bed of thorns and thistles for themselves, if the opposition had won in the state elections? That this had happened seemed now to be so undoubted that it was more and more generally conceded in their own camp. The *States* and the *Union* began zealously to appease the irritation, and frankly confessed that they did so on this account. "The free-soil people," wrote the *States*, on the 23d of January, "have won thirteen out of nineteen seats in the senate and twenty-nine out of forty-four in the house — a majority of twenty-one on joint ballot; Parrott has been chosen to the house of representatives, and Lane and Robinson will probably be the future senators from Kansas; which gives 'an entirely new aspect' to this question."

Buchanan, it was said, saw the matter in the same light. The *Evening Post* had been telegraphed to from Washington, on the 20th of January, that on the evening before there had been a great clash of opinions in the cabinet. A compromise, it was reported, had been proposed to the effect that Kansas should, indeed, be admitted as a state with the Lecompton constitution, but on condition that the first legislature should submit "the whole thing" to a vote of the people. Buchanan, Cass and Toucey were in favor of this compromise; Cobb, Thompson, Floyd and Brown against it, while Black had not attended the conference.

This piece of news was scarcely a pure invention; for a lie told with a purpose would have imputed something to Buchanan and his cabinet which needed no commen-

tary. But here a conundrum was propounded and an answer asked for. The compromise proposition alluded to gave each of the two wings of the democratic party one-half of the shell, and to the republicans the kernel of the nut: Kansas was to be admitted into the Union with the constitution foisted upon it by fraud, and which gave it the name and the rights of a slave state — this was conceded to the south; immediately thereafter the principle of the Kansas-Nebraska bill got its deserts in a popular vote — this was accorded to the Douglas democrats; but the republicans, in whose hands it very probably was in the interval, through the result of the elections of the 4th of January, got Kansas by means of this popular vote.

Such a proposition coming from Buchanan could be explained only on the assumption that the president had become convinced that Kansas was irrevocably lost, not only to the slavocracy but to the democratic party, and that, therefore, he desired to give the capitulation a form which would make at least an external union of the internally divided democratic party possible. If he were successful in this, the defeat would perhaps be less regrettable in his eyes than a victory, the cost of which would be the votes of the Douglas democrats in the next presidential election.

But what had determined all the southern members of the cabinet to reject the proposition? Did they still cling to the hope that Calhoun would, after all, be able to figure out a victory for them from the poll-lists of the 4th of January? Did they believe that the great majority of the Douglas democrats would finally veer about again and follow the standard of the slavocracy? Or did they not desire the preservation of the democratic party if the slavocracy was now defeated?

The dispatch to the *Evening Post* said nothing about all this. Every one might answer these questions as he wished, and no one could prove that his answers were the right ones.

The fact, however, that every thinking patriot had been made to ask the questions and to attempt to answer them was, notwithstanding, not without value. On the 2d of February, the president sent to congress a message, in which he unconditionally and unreservedly defended the Lecompton fraud. The questions had now, therefore, to be extended to him too; and whatever the answers given them, the situation, so far as the immediate object in controversy was concerned, was cleared, and that was something gained.

The message did not adduce a single fact or a single argument more. All it contained had been heard before over and over again, although not all from the mouth of the president. On the contrary, there was much in it that did not coincide with what he had previously said and done. There was now not a word in it, not the slightest intimation of paroxysms of impartiality and justice. The man was completely lost in the advocate who, on principle, recognizes no duty to truth when the interests of his client demands its suppression or distortion. But as he was, at the same time, forced into contradiction with his own words and acts, he fell into the mistake characteristic of the plea of advocates of that stamp; he overshot the mark, and injured the cause of his client by unbounded exaggeration.

The basis of the whole argument was the old allegation that the opposition in Kansas had been for years in a state of open rebellion, and that that fact was decisive of the question. The argument was much weaker than those which had been so frequently heard from Pierce,

Douglas and so many others; but the audacity of the conclusion made amends for that. If the whole Lecompton constitution had been laid before the people, said Buchanan, the opposition would have voted against it only in the interest of their revolutionary Topeka constitution, and not because they had found anything in it objectionable in itself. But was the principle of popular sovereignty to be applied only when congress and the president approved the grounds which, in their opinion, had determined the people's will in one way and not in another? Besides, Buchanan produced no proof of his allegation. He simply made the further assertion that the Lecompton constitution gave no cause for objection. Such might be his opinion. But that a great majority of the people of Kansas thought otherwise was established by the figures of the vote of the 4th of January. The president got over that fact by ignoring this vote. As the facts were against him, every assertion had to find support in some new assertion. Convincing as was the testimony borne against him by the letters he had written to Walker, he would now have it believed that he had never had in mind anything but the slavery clause when he spoke of the constitution, and that no one could ever have had in mind any other question.<sup>1</sup> The message also passed over in silence the manner in which even the slavery question had been submitted to the people; the facts

<sup>1</sup> It is significant that Buchanan — with, indeed, a break in the quotation-marks — inserts the words “in framing their constitution” in the popular sovereignty clause of the Kansas-Nebraska bill. In other questions, also, he could not dispense with similar petty artifices, but space will not allow us to follow him through all his crooked ways. Compare Buchanan's earlier declaration made in the annual message of December 6, 1858. The president gives the lie in this admission not only to Cass directly, as was already remarked there, but to himself.

were simply covered up by the statement that the opportunity afforded them on the 21st of December, to make known their will, had been "fair." What had gone before, on the contrary, was discussed *in extenso*, in order to prove the statement at the beginning that a less objectionable mode of procedure could not be imagined.<sup>1</sup> Hence, the opposition which had put itself in the wrong from the very beginning by its rebellion, had not, in this question, the shadow of a reason in law or equity to adduce; it had even recognized the Lecompton constitution by taking part in the state elections. Hence, the president could not help being "decidedly in favor of its [Kansas'] admission" as a state under the same.

After the message had thus discussed the legal and equitable question, it took up the question of expediency. The mode of argument remained the same; that is, assertions, in the most glaring contradiction with the facts, were substituted for reasons, and the result was just as satisfactory. Against the admission of Kansas nothing could be adduced, while the reasons which required its admission must be decisive with every patriot, since the continued existence of the Union would be imperiled by excluding it.

Buchanan declared that Kansas was, at that moment, a slave state precisely as Georgia and South Carolina were, since the supreme court of the United States had decided "that slavery exists in Kansas by virtue of the constitution of the United States." Not only Reverdy Johnson, who had been Sanford's attorney in the Dred Scott case, but Buchanan's own attorney-general, Black, publicly stated that the supreme court of the United

<sup>1</sup> "It is impossible that any people could have proceeded with more regularity in the formation of a constitution than the people of Kansas have done."

States had not and could not have said so, for the statement was pure nonsense.<sup>1</sup> There was a touch of humor in the fact that the president had to take a severe reprimand from such a quarter for his too great zeal.

The bold assertion had been made, in order that it might be inferred from it that the admission of Kansas, under the Lecompton constitution, was in the interest of the opponents of slavery likewise, since slavery could be abolished only by a constitutional provision, and the adoption of such an amendment might be effected more rapidly than if another beginning were made by the calling of a constitutional convention. Opposed to this assertion was the claim of the opposition that the Lecompton constitution prohibited all change before the year 1864. Buchanan not only denied that the provision of the constitution referred to was to be understood in this way, but declared the proposition that the people could, at any moment, renounce the right of exercising their sovereignty to its fullest extent, in respect to any question, irreconcilable with the principle of popular sovereignty. He, at the same time, appealed to the fact that New York had then a constitution which had been drawn up and put in force, in direct contradiction of a provision of its previous constitution. He might have also referred to the history of the federal constitution. But such facts did not overthrow the principle that changes of a constitution not made in the manner provided for by the constitution are always of a revolutionary character. That facts often make the law bend to them, and that the illegal facts then frequently become recognized law; and that the interests of nations frequently demand they should, so imperatively, that those who oppose it sin against the state, is an old and unquestioned truth. To interpret the

<sup>1</sup> See Congr. Globe, 1st Sess. 36th Congr., p. 416, and *id.*, App., p. 63.

principle of popular sovereignty to mean that the majority of the population having a right to vote might resolve, at any moment, in the face of the express provisions of the constitution, to make any constitutional change they wanted, in a manner legally binding, is, in principle, to deprive the democratic state, under a constitution, of the character of a constitutional state. The *Chicago Tribune*, a republican paper, thought that the president's doctrine might be accepted if it were to apply to the Union as well as to the several states. But the logical consequences of his premises had evidently, according to Buchanan, a claim to recognition only to the extent that they served his purpose. He had immediately placed himself in contradiction with himself, by making a resolution of the legislative power the precondition of the action of the sovereign people. But it was conceivable that the majority of the people might want the change of the constitution in question, but that the legislative power might not think it well to ask the views of the population on the subject, because of the constitutional provision objected to by the opposition, or for some other reason. As Calhoun had not yet allowed anything to be divulged regarding the result of the elections of the 4th of January, this possibility might at any moment become a certainty. How the sovereign people could, in that case, carry out their will, the message did not say. The claim that the admission of Kansas, under the Lecompton constitution, not only left the entire question in the hands of the people, but also assumed its most expeditious settlement, rested, therefore, upon a very unsubstantial basis. Nor would the state of the case have been at all different if congress, as the message proposed, expressly recognized the right of the people asserted by Buchanan, in the law admitting Kansas into the Union. But if the

opposition rightly interpreted the provision of the Le-compton constitution on changes of the constitution, such an authoritative declaration of congress would have been the annulment of that constitutional provision — that is, the grossest violation of the popular sovereignty principle of the Kansas-Nebraska bill.

If the reasoning of the president on this point could not be recognized as valid, his chief argument from expediency lost its force, viz.: the immediate restoration of peace and quiet by the dropping of Kansas from the list of political questions. But even if all else that the message contained had been incontestable, the untenableness of this decisive claim must have been patent to the dimmest eye, unless it entirely refused to see. Infallible means to bury the Kansas question and to restore peace and quiet to the country, had been already found almost as often as the revolutionary men of France from 1789 to 1796 had saved the fatherland; and, after every new infallible treatment, its wise inventors — just like the French saviors of their country — averred that the case had assumed a more disheartening and desperate appearance. To the claim of the president, made in private letters, in the daily articles of the press, and in the formal resolutions of the legislature, the answer now came from Kansas itself that it had been decided not to recoil even from forcible resistance, if the federal government tried to thrust the Le-compton constitution on the people.<sup>1</sup> That men there would be convinced by his arguments that they had no ground for complaint, and could most expeditiously and most certainly realize their own wishes if his proposal was carried out, Buchanan himself had not even ventured to represent as a possibility. And if, in this latter respect, said the message, a slight delay were

<sup>1</sup> See Congr. Globe, 1st Sess. 35th Congr., App., p. 244.

really caused by the admission of Kansas under the Lecompton constitution, it would be of the smallest importance compared with the evil consequences which a revival of the agitation of the slavery question would have in the whole country; and that, so far as the decision might affect the few thousands of inhabitants of Kansas who had, from the first, resisted the constitution and the laws, it should not be forgotten that for that very reason the rejection of the Lecompton constitution would be felt all the more keenly by the fourteen slave states. But even supposing that, as compared to the fourteen slave states, the inhabitants of Kansas had no claim to consideration, partly because they were so small in number and partly because they were rebels, what became of the millions in whose names the republicans and the Douglas democrats declared that not only was the outrageous oppression of Kansas encouraged, but that a sacrilegious attack was being promoted on the supreme principles of American freedom and on legal popular sovereignty. It was very evident that these millions, just like the opposition in Kansas, would not consider that everything was right and as it ought to be, if the president should win a majority in both houses of congress over to his views. The restoration of peace and quiet was, therefore, as completely excluded as it would have been by the rejection of the Lecompton constitution. The only difference was that, in the one case, the slavocracy, and, in the other, their opponents, should be the dissatisfied parties, who could have no answer but blows to the victors' hymns of peace. Buchanan's allegation would have been a fallacy even if the tacit presupposition of his entire argument on this point had been right, viz.: that, in the nature of the case, only the slave states had occasion for just complaint in the slavery question. But

to this fallacious conclusion he had to come, for the end and aim of the whole argument was this: The slavocracy has named the price for which we can get peace and rest from them; it would be criminal folly not to pay it, for it is a mere bagatelle as compared with peace and rest.

The assurance that, deeply convinced of his responsibility to God and to his country, he had done his duty, might be subjectively true. But it was undoubted that, at the same time, he was carried farther than ever from the goal he had described as his only earthly ambition: "to leave my country in a peaceful and prosperous condition, and to live in the affections and respect of my countrymen." Pugh was certainly a tried friend of the south, and yet he had wanted to make the admission of Kansas, under the Lecompton constitution, dependent on the condition that the slavery clause should be again submitted to a popular vote.<sup>1</sup> Buchanan assured the people that he believed he might be the restorer of peace, and acquire a new claim on the affection and respect of the people, by placing himself entirely on the side of one party in the struggle on the issue of which, in his opinion, the life or death of the Union might depend, and in which, therefore, the passions of the people must have reached the boiling point. His delusion, whether real or pretended, must have led to consequences too serious to allow the opposition to yield to the temptation to answer this strange logic by a loud peal of laughter.

The confidence of the opposition that they would remain victorious had, for some time, rather decreased than increased. Again, the south was afforded an op-

<sup>1</sup> See his own short statement of the contents of the bill introduced by him in the senate on the 4th of January. Congr. Globe, 1st Sess. 35th Congr., p. 175.

portunity to play the old game of "tit-for-tat," and some of its representatives had announced that they would do so. Minnesota also had petitioned for admission as a state. But there, too, all kinds of grave irregularities had taken place on the occasion of the adoption of the state constitution,<sup>1</sup> and, referring to them, Mason and Brown had declared in the senate: "If you do not comply with our wishes in the matter of the Lecompton constitution, Minnesota too will be refused admission."<sup>2</sup> That this threat alone would exercise a sufficient pressure on one or other of the groups of the united opposition was not probable. But still it exercised some pressure;

<sup>1</sup>The enabling act provided that the constitutional convention should be composed of seventy-eight members. Instead of that, one hundred and eight were chosen, who, however, did not meet in *one* convention, but, dividing according to party, in two, consisting of fifty-four and fifty-nine members respectively — that is, more than had been chosen altogether. Conference committees agreed upon a constitution, which, however, was subscribed by the democrats, but was, in accordance with the enabling act, submitted to a vote of the people. It was approved by a large majority, and all irregularities were cured, in the eyes of the democrats, by popular sovereignty. The republicans complained of enormous frauds of every description, but desired admission notwithstanding, in order to increase the number of free states. Hence the admission of Minnesota was against the slavocratic interest. But it was, in a high degree, in the interest of the democratic party, as the elections had been in its favor. The latter, therefore, raised no objection to the fact that the state legislature met and elected United State senators without waiting for admission, while the Topeka legislature in Kansas was accused of rebellion. Neither did the democratic party object to the fact that the certificates of election had been issued by the governor of the territory, who now did not even live in Minnesota, but was a post-master in Ohio. And that, instead of the two members of the house of representatives allowed by the enabling act, three had been elected, was a happy thought, to which, of course, it did not refuse its recognition.

<sup>2</sup> Congr. Globe, 1st Sess. 35th Congr., p. 501.

and perhaps it did not require much more to move this or that representative to bring the Lecompton question up for serious reconsideration. Some southern papers had declared against the Lecompton swindle; but, on the other hand, northern papers which at first clung to Douglas had already returned with flags unfurled to the camp of the slavocracy.<sup>1</sup> Thus far, indeed, the rents in the democratic party were not very deep; but the administration had a great many weapons of the genus club at its disposal; and that it was resolved to make the most extensive use of them with the most reckless energy was the only conclusion the opposition drew from the message. Its direct effect, therefore, was a more violent clashing of opposing forces. This was the first proof which the facts furnished for the president's assertion that, in it, he had pointed out the way to peace.

During the night of the 5th-6th of February, the house of representatives again presented a dreary picture. The excitement reached its height when Keitt began to use his fist instead of his tongue against Grow. The late winter morning had begun to dawn when the representatives of the people left the Capitol. The Sabbath that interrupted the struggle saw, indeed, the majority of them in the churches; but the "Peace be with you" they left at the threshold of the house of God. On Monday, the 8th of February, there were no speeches — there was only voting. The Lecompton party was defeated, but by a majority of only three votes. Harris, a democrat from Illinois, who, like Douglas, had previously held the free-soil party alone responsible for the Kansas troubles, had made a motion which was adopted to refer the message to a committee of fifteen members, who were to investigate and establish the facts relating to the Lecompton

<sup>1</sup> See some examples, *Congr. Globe*, 1st Sess. 35th Congr., p. 1238.

constitution. The speaker did not blush to rob the victors of the fruit of their victory by, contrary to all parliamentary usage, giving the opponents of the resolution a majority in the committee. The opposition with a majority of only three votes, and the administration party not recoiling from the use of such weapons — well might the most hopeful be alarmed about the issue of the struggle.

What the majority of the house of representatives wanted to obtain through a committee, Douglas wanted to obtain through the executive. The resolutions moved by him, on the 4th of February, enumerated separately the points on which the president was to be requested to give information to the senate, by communicating to it the facts known to him and by transmitting to it the official correspondence.<sup>1</sup> The majority did not allow the resolutions to come to a vote. Mason opposed a vote on them, on the ground that these facts did not concern the senate, and should not influence its conclusions. Because the demand of the slavocracy could not be maintained in the face of the facts, congress was denied the right to take any other phase of the question, as the purely formally legal one, into consideration. Colfax afterwards proved in the house that, according to this doctrine, even Utah would have to be admitted into the Union as a state as soon as it submitted a constitution to congress.<sup>2</sup> But even if only a formal question of law was before congress, which it must decide regardless of justice and of consequences, it should not have refused to inform itself fully on all the facts. How could congress look upon it as established beyond a doubt that the constitution transmitted to it was, as the committee on territories expressed itself in its report, the "legal constitution" of

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., p. 570.

<sup>2</sup> Id., p. 1221.

the state to be admitted,<sup>1</sup> if it did not know all the facts relating to the history of its origin? The facts were notorious; and because, both in matter and in form, they were not irrelevant, but, on the contrary, of decisive importance, the slavocracy prevented their official establishment by lowering the rights and duties of congress in the admission of a state to the level on which the notary public in civil cases between man and man stands when drawing up the instruments to be executed by him.

This was the view on which the report<sup>2</sup> that accompanied the bill introduced by Green in the senate, in the name of the committee on territories, on the 18th of February, for the admission of Kansas, was based. By the utter shamelessness with which, from this point of view, it defended the Lecompton swindle with all the weapons of sophistry, this report has a distinguished place among the dark monuments which the slavocracy erected to itself in the parliamentary annals of the Union. Men personally respectable would not have been able to descend so low were it not that the knowledge, or the instinctive feeling, that their cause — that is, the assertion of their

<sup>1</sup> "This committee is of opinion that, when a constitution of a newly-formed state, created out of our own territory, is presented to congress for admission into the Union, it is no part of the duty or privilege of congress either to approve or disapprove the constitution itself, and its various provisions, or any of them (the opposition by no means based their action on this right), but simply to see whether it be the legal constitution of the new state."

So, too, Stephens says in the report of the majority of the committee of fifteen: "When a new state presents a constitution for admission, congress has no more power to inquire into the manner of its adoption than the matter of its substance; . . . the mode and manner of its adoption can be inquired into only so far as to see that it has been formed in such way as the people have legally established for themselves."

<sup>2</sup> Sen. Rep., 35th Congr., 1st Sess., vol. I, No. 82.

supremacy over the Union — was hopeless, exerted such a pressure on their moral sentiments that every means seemed allowable to them. This masterpiece of refined psuedo-logic should, therefore, perhaps have excited sympathy rather than disgust and moral indignation.

Douglas had so often, in the service of the slavocracy, proved himself a master in the bad art that it could not be hard for him, now that it disturbed his plans, to show in his minority report what a distorted face grimaced behind the smooth mask. But the slavocracy knew this just as well as he, and it could, therefore, make no impression on them. Their resolution was irrevocably made to take, in what they said and what they did, no point of view but that of success. Almost every day now brought new and stronger proof of this.

On the 4th of March, Green moved in the senate to substitute for the bill of the committee on territories another bill, in which Kansas and Minnesota were coupled together. On the 11th of March, Harris informed the house, in the name of the minority of the committee of fifteen, that the majority of that committee had voted down every motion that aimed at the investigation and establishment of the facts they were appointed to inquire into, that they had adjourned *sine die*, and had, therefore, bid defiance to the command of the house. But the speaker defeated him by deciding that it was not a "privileged question," since the minority of a committee had no report to make. On the 15th of March the majority in the senate, in accordance with a caucus resolution, made a brutal attempt to force a vote, although there were still many members of the opposition who wished to be heard. Thus far the senate had deemed itself too distinguished a body to abridge that right, as the house of representatives had done, in any way, and

the smaller number of its members, as well as its juster mode of warfare, had always allowed its time to be sufficient for it. Now the majority suddenly took the unscrupulous coercive practice of the house against minorities as its example. Clark was refused the adjournment he had asked for, although he had stated that he was almost unable to speak, because he had not eaten anything since 8 o'clock in the morning. Still, he spoke, but took the liberty, after a while, to interrupt his speech, in order to refresh himself, before the assembled senate, with a cup of tea and a piece of bread and butter. In the meanwhile the senate killed time with an angry debate on questions of order. Toombs threatened that the majority would "crush this faction." Fessenden replied that that was not very easy. The opposition gave the assurance, over and over again, that they were far from having any intention of improperly postponing the decision; all they asked was to be heard. At last the majority declared that they were ready to adjourn, if the opposition bound themselves to allow the vote to be taken on a definite day. The opposition did not agree to this, because they first wished to consult with one another; but, next morning, they would be willing to accede to it. Now, however, the majority were not satisfied. Benjamin called on them to go, leaving the house and the responsibility for the disruption of the government to the minority. Toombs said they should refuse to do any business until the "previous question" was introduced in the senate likewise. But the minority did not allow themselves to be terrified by all these threats, and the majority broke off the hopeless struggle at 6 o'clock in the morning.

This undignified parliamentary scuffle was of importance only so far as it afforded a striking illustration of

the stubborn violence with which both sides fought. It could not influence the result of the battle. In the senate, the slavocracy had been sure of victory from the start. The decision lay with the house; and there they had to resort to means of a different kind if they wished to hold the field. Since opportunities of learning what these means, as a self-evident consequence of the spoils system, could effect, had already frequently been had, it was not considered doubtful that they would be employed now. But hitherto the concession, as a rule, had been made to political morality of boldly denying what was done — as a rule, we say, and not always. But it had never before been as frankly declared as it was now, by the organ of the administration, to be the duty of the administration to bear in mind that purchased votes counted for as much as votes that were not purchased. Now, wrote the *Union*, the executive can make its influence felt in a decisive manner; “the shaky and hesitating democrats” are known, and they can be again brought into the ranks by the government patronage.<sup>1</sup> Covode subsequently stated that the investigating committee, commonly called after him, found proof in the books of the Bank of the Metropolis that people had not confined themselves to the employment of the patronage system, but that votes had been directly bought.<sup>2</sup>

<sup>1</sup> “The democratic party must be preserved! If patriotic services deserve reward at the hands of the people when displayed on the field of battle, they no less deserve it when displayed in civil life. The matter is now in the precise condition in which the executive influence may be most available and decisive. The shaky and hesitating democrats are marked, and may be brought into the ranks. A large executive patronage is yet undisposed of. Additional patronage is to be afforded by the army bill, if it should pass, as it will, in some shape.” Quoted in *Congr. Globe*, 1st Sess. 35th Congr., App., p. 223.

<sup>2</sup> See, in the *N. Y. Tribune*, the report of his speech delivered the

Whether or not, with his republican eyes, Covode saw more than there was to be seen, there were certainly men in the house of representatives who, by an appeal to their personal interest, might be made to see the interests of the public in a different light, and the *Union's* exhortation was not unheeded. But there were democrats who just as certainly could not be bribed, and still were "shaky."<sup>1</sup> Another bridge was now built for these by Calhoun—one over which the way to Lecompton might, perhaps, seem passable to them. If they were not obliged to recognize, in addition to the Lecompton constitution, a state government which, to use Douglas's words, depended on "forgery and perjury," a great difficulty would certainly be removed. Calhoun, therefore, now sent to the publisher of the *Star* a letter intended to create the impression that, in this respect, they had no cause to be uneasy. He said that he had, indeed, not yet received any official information, but that everything else that had come to his knowledge had convinced him that the poll-lists of Delaware Crossing were a fraud, and that therefore the free-state candidates were elected.

Whoever wanted to go into the net might do so; but he had to do it without being able to say afterwards that he had not seen it, and had not been warned in time. Douglas, too, knew exactly how many of his followers had

day before in New York. The money raised for the purpose of bribery was all entered under fictitious names. According to the statement of the cashier "S. U.," for instance, meant "to save the Union." One entry ran: "Pay Kansas \$5,000."

<sup>1</sup>H. S. Foote also relates, however, that Cobb, the secretary of the treasury, had said to him: "Oh, I think we shall get it (the Lecompton bill) through. We have now secured almost as many votes as will be necessary to its passage; and you know that this department is always, in such a struggle, good for at least twenty votes." *Casket of Reminiscences*, p. 118.

become "shaky," and he was not the man to facilitate their fall by leaving them such excuses. For months, said he, in the senate, on the 22d of March, the reports about Calhoun's intentions had alternated like the heat and chills in an intermittent fever. Now, suddenly, immediately before the decisive vote, he felt impelled to make the public his confidants. The trap was so clumsy that only "green" people could fall into it. His declaration was a worthless bit of paper; for, according to the provisions of the Lecompton constitution, his powers in this question had been transferred, by his absence from Kansas, to the president *pro tempore* of the convention.

This was true, and hence the letter could have no aim but that imputed to it by Douglas. The only surprising thing is that Calhoun did not delay its publication until after the vote in the house. Only as a surprise could the dishonorable manœuvre, perhaps, be attended with success; and, in the house, the decision for or against might depend on two or three votes, while in the senate the undoubted majority would, at the most, have been only somewhat increased. As the Lecompton party had this majority, it was evident from the first that they would have to let the senate take the initiative; that is, that the decision of the house would have to take the form of a vote on a bill transmitted to it by the senate. On the 23d of March the Lecompton bill was passed by the senate by a vote of thirty-three against twenty-five. The coupling of Minnesota with Kansas was abandoned, and the express recognition, recommended in the message, of popular sovereignty, as a trap for "green" members, after the exact pattern of the Calhoun letter, was made. "Nothing in this act," we read, "shall be construed as an abridgment of the right recognized in the constitution of Kansas of the people to alter the same at any time in

the manner they wish." Nobody had ever expressed or entertained the foolish fear that that right would be curtailed by congress in a law admitting a state into the Union. The question in controversy was whether the Lecompton constitution absolutely recognized it or forbade its exercise before 1864. The declaration that congress did not deny the existence of the right recognized by the Lecompton constitution was, therefore, not what it was meant to appear to be: an answer to the question whether Kansas might abolish slavery before 1864. Lie upon lie, fraud upon fraud, swindle upon swindle,—such was the unavoidable consequence of the resolution, by means of the monstrous fraud of the Kansas-Nebraska bill, to deprive freedom of the possession granted her for all time.

On April 1st a vote was taken in the house on the question whether the senate bill should be rejected at the first reading. A large part of the opposition refused to have anything to do with so radical a condemnation of the entire Lecompton policy. The question was decided in the negative by a majority of forty-two votes. Montgomery, of Pennsylvania, then moved, as a "substitute," a compromise bill, the real father of which was Senator Crittenden. Before a vote was taken on this bill Quitman moved to strike out of the senate bill the clause referred to relating to the right of amendment. That clause, had, indeed, as has been seen, only a problematical value; but it was all the more significant, on that account, that seventy-two southern representatives refused to make even this seeming concession to the principle of popular sovereignty against the slavocratic interest.

The Crittenden-Montgomery bill, which was adopted after the rejection of the Quitman amendment, by a vote of one hundred and twenty to one hundred and twelve,

provided for a popular vote on the Lecompton constitution. If it were adopted, the president was immediately to announce the admission of Kansas by a proclamation; if it were rejected, the people of Kansas might elect delegates to a new constitutional convention.

By this manœuvre the mask was completely torn from the hypocritical face of the Lecompton party. But did not the republicans pay too high a price for that, since it had long been certain that that party knew no law but the interest of the slavocracy, and was resolved to trample the principle of popular sovereignty under their feet, as, under the leadership of the Douglas democrats, they had torn the Missouri compromise to pieces? A victory was not won, but an attack was repulsed for the moment; and it was repulsed, not by the republicans, but by a coalition of Douglas democrats and six southern Americans,<sup>1</sup> whose following the republicans had constituted themselves. As early as March 11th, Chase had seriously remonstrated with Seward because he had not strongly advocated holding fast to the principles on which the party had grown up as a natural product of the circumstances of the time,<sup>2</sup> but seemed to maintain that for the present the party should change its base to that of

<sup>1</sup> Stephens writes, on the 2d of April: "Six southern 'Americans' defeated us. Twenty-nine northern democrats stood firm. Had all the southern members stood firm also, our majority with a full house would have been eight." Johnston and Browne, *Life of A. H. Stephens*, p. 332.

<sup>2</sup> "It seems to me that, in the regular process of mental and political developments, working singly and irresistibly, a transition and transformation of parties, the republican organization has grown up, not as much by choice as by necessity. Our true policy and true wisdom is to adhere to it, instead of changing, to strengthen its base. Another course may seem to give greater immediate accessions of strength, but will result, I verily believe, in defeat." Warden, *Private Life and Public Service of S. P. Chase*, p. 343.

the principle of popular sovereignty. Its representatives in the house had now taken the great retrograde step, spite of the certainty that the senate would not allow itself to be determined thereby, to return to the principle of the Kansas-Nebraska bill as interpreted by Douglas. Its advocacy of the principle which it had condemned on numberless occasions, not only from the point of view of constitutional law, but also of common sense and freedom, could at best produce only the negative result, that the admission of Kansas as a state, with the Lecompton constitution forced on it, would not be carried. But could they consider it certain that those whose flag they followed would themselves remain true to it throughout? The Lecompton party was defeated by a coalition of three parties, and only by eight votes. Was a turn of the scales quite inconceivable, even if the opposition were to a man so honorable that no attempt would be made to try the convincing power of patronage? Was the gap between Buchanan's popular sovereignty and Douglas's so much broader and deeper than that between republican principles and the popular sovereignty of the Douglas observance? What warranted the assumption that some honest Douglas democrats would not be able to discover reasons to overleap the former — reasons at least as weighty in their eyes as were, in the eyes of the republicans, those which had led them over the latter? Democratic politicians who, four years before, had lauded the substitution of popular sovereignty for the Missouri compromise as a glorious achievement, now required much less short-sightedness, self-deception and party spirit to consider an understanding with the ruling wing of the party a patriotic duty. And if only five Douglas democrats in the house were converted to this view, what would the republicans have gained by

the actual denial of their principles? They claimed to be the party *par excellence* of principle and conscience, and hence could not overwhelm the "traitors" with their moral indignation without smiting themselves in the face.

The 1st of April is not, as the republicans thought, a day of honor and rejoicing in the struggle for freedom, right and self-government. Their unanimous vote for the Crittenden-Montgomery bill showed that, since the presidential campaign of 1856, they had made no progress, but had been driven back; that more reliance was placed on skilful tactics than on correct principles, and that the slavocracy had to add many terrible items more to their list of national sins before they forced an unwilling people to recognize that the proposition: compromise is the essence of politics, was not only a fatal error in this question, but that, in the nature of things, it must become steadily fatal in an ever-rising degree. A new proof was added to all the earlier ones, that the solution of the question was not to be expected from the sagacity of statesmen. They were, indeed, working at it, from every direction, with all their might; but they were doing so chiefly through their erroneous calculations and their moral weakness. There was only one solution: the grinding weight of brutal facts. The problem had outgrown the limits of the power of statecraft. The man who cannot recognize this must be unjust in his judgment of all parties and of the leading personalities in them. In very different ways and from very different motives, pure and impure, willingly<sup>1</sup> and unwillingly, moving and moved, by what they did and what they left undone, they all helped force the problem out of these

<sup>1</sup> It is worthy of note that this charge was most severely formulated by a southerner. Gilmer said, on the day before the vote: "I have heard and read speeches delivered both in this house and in

limits, and thereby forced it to that only possible solution. Judged from the point of view of the final result, they all, therefore, labored for the salvation of the country, by the right and the wrong in their thinking, in their will and in their deeds, because they prevented stagnation and brought about the catastrophe so early that it might become a blessing to all. But this was possible only because — although again in very different ways and in very different measures — in the thought, will and action of all, the right and the just were so amalgamated with the wrong and the unjust that in the catastrophe and through the catastrophe the moral powers necessarily attained a stronger and stronger development, since, on the one side, they forced the war for the restoration of the Union into a war of annihilation against slavery, and, on the other, transformed secession for the purpose of founding a slavocratic confederate republic into a heroic struggle for independence. Because the adoption of the Crittenden-Montgomery bill was, in one sense, a great step backwards, it was in another a great step forwards: a new stage on the way to the redeeming catastrophe had been reached.

the other end of this capitol, by gentlemen from the north and from the south, the true spirit and meaning of which is disunion.

"True, most, if not all, profess to love the Union and the constitution. . . . They indulge in patriotic strains. . . . The spirit of disunion is, however, the core. . . . The design is evidently to infuse the poisonous spirit of disunion where, for it, there could be no reception, were proper labels attached. Professions of patriotism are uttered in loud and eloquent tones, for peace and harmony, while the evident drift is to exasperate and make wider the breach." *Congr. Globe*, 1st Sess. 35th Congr., App., p. 282. The word design was certainly not justified as regards a single northern representative.

## CHAPTER V.

## ENGLISH'S BILL.

The present generation, which surveys the entire history of the development of the slavery problem, from its inception to its final solution, finds it difficult to understand how, even at this time, so dense a cloud could obscure the vision of the clearest eyes. Where moral earnestness and courage, not to recoil even before the extreme consequences which might be entailed upon the country by inviolable fidelity to principle, were wanting, there was no cause to wonder at the greatest obliquity of thought and the greatest errors of judgment. But as not a single republican in the house of representatives had voted against the Montgomery bill, the surprising retreat of the "party of principles" could evidently not be traced to these alone. Men like Giddings and Lovejoy must have been determined by other motives. The most probable supposition, in their case, is that, with heavy hearts, they made the concession to their party associates weaker in the faith, because, by so doing, they thought they would be able to prevent something worse. This at least is a view which there is no difficulty in understanding. But how are we to account for the fact that men with clear heads, great and fearless hearts and strong nerves, in one and the same breath, laid stress on their unshakable fidelity to principle and approved the Montgomery bill as a tactic maneuver? But when Chase, who had recently endeavored so strenuously to rouse Seward's conscience to a sense of not sacrificing principle to momentary considerations of expediency, saw no intrinsic contradiction in such ac-

tion, even after the value of these tactics was placed in the most glaring light<sup>1</sup> by a successful counter-maneuver, no great reproof can be administered to average politicians because they were involved in the greatest darkness as to the character and import of this step.

If I have a correct conception of the entire situation at this moment, the grave mistake of the republicans in this case was due only in a very small degree to their want of moral energy. The heat of the battle had warped their judgment on the point which they should have recognized as the decisive one. Because Kansas had been, in recent years, the position most hotly contested, they had, to a certain extent, lost the consciousness that it was in itself only a part, and a comparatively small part at that, of the whole field of battle. They looked upon the slavery question as so much absorbed by the Kansas question that they were not able to rise to a recognition of the fact that, in order to be able to continue the general struggle effectually, they would have to be resigned to the loss of the territory, even if there

<sup>1</sup> In a letter dated May 12, 1858, written, therefore, immediately after the passage of the English bill, to Pike, we read: "Resistance to it (the Lecompton iniquity) by all means not dishonorable, and to the last extremity (!), was ever my counsel to all who thought it worth asking for. I even counseled against the contingent consent proposed by the Crittenden amendment, and would never, had I been in congress, have voted for that proposed by the Montgomery amendment, except as the only means left of defeating the direct consent to the Lecompton bill. Regarding it as the only means left, I should have acted just as our friends in the house acted, whose votes, under the circumstances, for that amendment I have constantly approved and still approve." And also: "I am very certain that the great masses of the republican party agree with me in determination to maintain republican principles without compromise (!), . . . firmly resolved not to leave our own (principle) to stand on foreign ground." *First Blows of the Civil War*, pp. 419, 420.

was a means of saving it. To save it now seemed to them their chief duty. They looked upon the direct triumph of the Lecompton swindle as the worst thing that could now happen to the country, and, in their opinion, there was no better means than the one they had made use of to avert that worst of evils. Hence their eyes could not be opened even by the fact that, on the very following day (April 2d), the senate rejected the Montgomery bill.<sup>1</sup> They had certainly expected this; and even if they had been able, they would not on that account have undone what they had done.

It was almost two weeks before the sweet illusion that they had deserved well of their country was disturbed by a single shock. Secession, the fire-eaters had threatened, would be the answer of the slave states if Kansas were refused unconditional admission under the Lecompton constitution, and it had now been coupled by the house with a condition which the slave states well knew would never be fulfilled. "If you show Kansas the door, Minnesota too will have to stay outside," was said then; and now, on the 7th of April, the senate passed the Minnesota bill by a vote of forty-nine to three. The senate had declared that it would stand by the Kansas bill, and the house likewise resolved that it would abide by the Montgomery substitute. Should not, nay, must not, every reasonable man, who was not made oblivious to the attainable by the desirable, have recognized all this as highly thankworthy, since, in view of the solid majority in the senate, a victory was impossible? This way of looking at the matter left one thing out of consideration: that it would end with this purely negative result was all the more improbable, as, in Kansas, a new constitutional convention had closed its labors at Leavenworth

<sup>1</sup> By thirty-two against twenty-three votes.

on the 3d of April, and the constitution it had drafted was to be submitted to the popular vote on the third Tuesday in May. The argument that the two houses of congress would have to unite on a positive measure of some kind, in order to prevent the affairs of the territory from becoming twisted into a disentangleable knot, could, therefore, be employed again with great force. The decisive trial whether the fall of the "shaky" ones could be prevented was yet to be made.

On the 13th of April the senate moved that a conference committee be appointed. The vote in the house on the following day was equally divided; the speaker's vote gave the decision in favor of the adoption of the motion. The republicans did not deceive themselves as to the importance of this defeat. But whether the game was irrevocably lost to them already might, however, seem doubtful. As the scales had been in equilibrium, the decision might easily depend on how the speaker would construct the committee. He appointed English of Indiana, Stephens of Georgia, and Howard of Michigan. The latter was a republican, and his and Stephens's vote offset each other. The decision had to be made by English. What had the different parties to expect from the man who considered Orr of South Carolina the fittest person to speak the word on which depended, perhaps, the fate not only of Kansas but of the Union?

English was one of the three northern democrats who, notwithstanding their vote on the Kansas-Nebraska bill, still had a seat in the house of representatives. This fact attracted all the more attention to the firmness with which he took a position, in a long and excellent speech, delivered on the 9th of March, against the unconditional admission of Kansas under the Lecompton constitution. He had never yet, he said, been guilty of the slightest oppo-

sition to a party command. He should, therefore, claim consideration, now that he uttered a word of warning. The representatives of the north could not do certain things even if they wished. A severe defeat had been the consequence of the Kansas-Nebraska bill, which, in the opinion of all party comrades in congress, rested on correct principles. What was to be expected from a measure "which nine-tenths of the people of the free states hold to be a fraud, and at war with the plainest principles of justice and republican government?" The statesman had to grasp "the great political facts;" and the incontestable fact that the Lecompton constitution did not give expression to the will of the people of Kansas was plain as day, and they would have nothing to do with it. It betrayed the "spirit of a Shylock" to appeal from these facts to legal subtleties suggested by the wording of the law; but these were the only arguments which it had been possible to produce for the assertion that Kansas should be admitted under the Lecompton constitution.<sup>1</sup>

This was a confession of faith which could not be misinterpreted, and English allowed it to be believed, up to the last moment, that he stood by it. In this way only could the exhortation be understood, which he addressed to the speaker before the appointment of the conference committee, in conformity with parliamentary law, to take the majority of the members of it from the majority of the house; that is, to choose them from among those who were in favor of the house bill.<sup>2</sup> He had then voted for the motion, although he had received no answer to the question whether the speaker would agree to his suggestion. What sense was there in this if, in his opinion, one should not allow oneself to be forced beyond the line to which the house had gone in its concessions to

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., pp. 103, 104.

<sup>2</sup> Ibid., p. 1589.

the senate in the Montgomery bill? Must not Orr have inferred from this, or become convinced in some other way, that he was ready to enter into negotiations? That the conference committee would not be able to reach any positive result, if the majority of the representatives of the house should meet their programme with an obstinate *non possumus*, was self-evident.

The republicans could not be so confident as not to have asked themselves these questions, even if the recollection of the speech of March 9th did not make them give up all hope immediately. But as early as the 20th of April, Lovejoy wrote to Pike: "It seems as though English would strand our ship."<sup>1</sup>

How the pilot appointed by Orr was to bring about the shipwreck, the republicans, so far as I can see, then seemed not to have suspected. When, subsequently, the administration party in the house urged a speedy decision on the adoption or rejection of the proposals of the conference committee, and even betrayed no great dislike not to allow the opposition a close, critical examination of them, Howard, at least, declared that he was probably the only republican member of the house who had had any knowledge of the bill before it was read by the clerk, while he had reason to believe that it had been before the opponents of his party for examination for several days.<sup>2</sup> But there is no lack of direct proof, however, that, conscious of working at a job that feared the light, a surprise was planned from the start. Howard and Seward, who, together with Green and Hunter, represented the senate, asked for a day to examine the bill which English had submitted to the conference committee as a proposal of mediation; but the majority resolved to grant

<sup>1</sup> First Blows of the Civil War, p. 417.

<sup>2</sup> Congr. Globe, 1st Sess. 35th Congr., pp. 1767, 1768.

them only two hours.<sup>1</sup> This resolution was, it is true, not carried out, but not because, on closer examination, it showed a want of courtesy and justice, but because difficulties had arisen in the camp. This cannot surprise us; for the bill to which English owes the unenviable immortality of his name was a legislative monstrosity — almost the only one of its species.

As the people of Kansas, said the bill,<sup>2</sup> by a convention at Lecompton have adopted a republican state constitution, and simultaneously an ordinance in which it is declared that the state desires to renounce the right claimed by it to tax the lands of the United States situated within its borders, on certain conditions (namely, the assignment of definite parts of these lands), and as that constitution and that ordinance have been sent to congress with the petition to admit Kansas as a state, but the conditions are not acceptable, it is provided that the people of Kansas shall declare, by a general vote, whether they are willing to accept other more minutely specified and considerably less favorable provisions in respect to the federal lands to be assigned; every ballot shall have on it the words "proposition accepted," or "proposition rejected;" if the majority vote for the adoption of the proposition, the president shall immediately announce the admission of Kansas as a state, with equal rights, by a proclamation; "but should the majority of the votes be cast for 'proposition rejected,' it shall be deemed and held that the people of Kansas do not desire admission into the Union with said constitution under the conditions set forth in said proposition." In this case the people of Kansas are empowered to hold another constitutional convention, but only after it shall have

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., p. 1880.

<sup>2</sup> See the entire text, *Ibid.*, pp. 1765, 1766.

been established by a census legally taken that the territory has at least the population required for the election of one representative; before the convention proceeds to the drafting of a constitution, it shall decide by a vote whether the people, at the time, desire admission as a state; whatever the law provides in respect to the ratification of the constitution shall be valid, and the admission shall take place with or without slavery, as established by the constitution

In the short speech with which English, on the 23d of April, introduced the bill in the house, he stated that the conference committee had been guided by the idea that they must cling to the "correct principles," but that they should not "hazard the peace of the country for the sake of an unimportant point or unmeaning word." If the bill were passed, the Kansas question would, perhaps, never come before congress again, and even if it did come before that body again, it would be "deprived of all power of working evil." "It is one of those cases where much is to be gained and nothing lost." The responsibility of those who, "for a slight cause," jeopardized all the blessings that flowed from the union of the states would be a frightful one. Of the material contents of the bill, he touched only the land question, calling attention to the fact that the difference in the present selling value of the public lands asked by Kansas and offered in the bill amounted to \$25,000,000 in favor of the Union.

On reading the bill and this explanatory speech, the people had to rub their eyes and ask themselves whether, after all, the long, hot struggle over the Lecompton question was only a confused dream. Neither the bill nor the speech contained a single word on the great issue of princi-

ple on which the battle had been fought. The sole objection to the admission of Kansas, under the Lecompton constitution, that now appeared, seemed to be the claim of the Lecompton convention, made in the ordinance, that the state might tax the federal lands; and the absurdly high price demanded for the abandonment of that alleged right. In the earlier negotiations these two points had not, by any means, been overlooked, but the administration party itself had insisted that they constituted no difficulty whatever. Pugh, who now declared that the English bill was a "fair and honest compromise between the senate bill and the house bill," had previously said: "The ordinance is not a part, cannot be made a part, of the constitution, no matter what Mr. Calhoun certifies. This does not affect its legal force." The question was only about public lands; and, from the time when Ohio was admitted, all the new states had asked more of such lands than congress had granted. The endeavor to make a mountain out of this mole-hill would not be successful. Benjamin, likewise, had called attention to the fact that new states had already frequently claimed the right to tax property of the United States, in order thereby to compel greater land grants; and he remarked, besides, that that right "has never yet been conceded, and never will." And it was not only individual senators who had spoken with this determination. The senate had, notwithstanding the ordinance, adopted its Lecompton bill, which assigned to Kansas just as much land as seemed proper to that body, and it had asked the assent of the house to that bill. More yet. Not even a single voice had been raised in the senate against an additional amendment, proposed by Green, which simply and unconditionally, in express terms, rejected the claims and the demand

made in the ordinance.<sup>1</sup> Hence, Wilson did not make use of too harsh terms when he said the report of the conference committee "comes to us under a false and lying pretense. Yes, sir; false and lying pretense."<sup>2</sup>

The bill was not a compromise; the false and lying pretense simply charged the house with surrendering its position. The principle on which it had objected to the admission of Kansas under the Lecompton constitution was that that constitution was not the will of the people. But Hunter truly said that English's bill was based on the assumption that the people of Kansas asked for admission under the Lecompton constitution. Not the constitution, but only the proposition of congress in relation to the public lands, was to be submitted to the people to vote upon. But the rejection of the latter was to have, as a consequence, the rejection of the former; and solely on account of this consequence was the proposition to be submitted to a vote of the people. And this actual voting on the constitution, in the form of a vote on the proposition, was favored in order to afford a possibility to vote for the bill, both to those who denied and to those who affirmed that the constitution had to be submitted to a vote. Its fate depended upon this; for that was the back-door which was opened to the anti-Lecompton democrats who were will-

<sup>1</sup> "That nothing in this act shall be construed as an assent by congress to any or all of the propositions or claims contained in the ordinance annexed to said constitution."

<sup>2</sup> Less drastic in form, but just as decided in the matter, Crittenden expressed himself. He said: "That (are you willing to take these grants of land?) is the only question to be submitted to the people; but by legislation a consequence is to flow from their action perfectly arbitrary in its nature, and altogether illogical in the conclusion. . . . It is a sort of feigned issue out of congress." *Ibid.*, p. 1814.

ing to be converted. They asserted with their leader, English, that they had not surrendered the correct principles, since the bill, if not in express terms, yet practically, conceded a popular vote on the constitution; while Stephens, like Hunter and Green, with great determination, declared that such was not the case, but that the English bill held fast to the principle of the senate Lecompton bill, that everything that had taken place in Lecompton was entirely legal, and that the demand for a popular vote was wholly unwarranted.<sup>1</sup> It was a repetition of the experiment which had succeeded so well with Douglas in the Kansas-Nebraska bill: an effort was made to unite the several factions of the democratic party in order to subserve the interests of the slavocratic south, by means of a formula which each of them might interpret as it wanted.

But there was now one difficulty in the way which had not existed then. In case Kansas decided against admission, under the conditions of the English bill, it had to be determined what position would have to be taken when a request was made for admission under a new constitution, on the question of a ratification by a vote of the people. The difficulty was surmounted by taking no position at all on the question of principle, and by, at the same time, giving the slavocracy another chance to try, eventually, to repeat the Lecompton game

<sup>1</sup> English refused to make a direct and unambiguous statement as to whether he interpreted his bill in this respect as Stephens did. To a question relating hereto put by Marshall, he answered: "This bill is drawn in tolerably good English, and I suppose the gentleman from Kentucky understands that language, and is competent to judge what the meaning of the bill is." *Ibid.*, p. 1882. Owen Jones, of Pennsylvania, another deserter from the camp of the anti-Lecompton democrats, answered the same question: "I am willing to let the people of this country construe this bill for themselves." *Ibid.*, p. 1903.

over again. The matter was left to the decision of Kansas, while the ratification by the people was made a *conditio sine qua non*<sup>1</sup> in the case of Minnesota, and had been urgently recommended by Buchanan to be made henceforth the invariable rule.

This was not the only point on which the administration party, under their new leader whom they had won *ad hoc* from the democratic opposition hitherto, turned against the president. The English bill upset the reasoning by which Buchanan had supported his advocacy of the admission of Kansas under the Lecompton constitution.<sup>2</sup> His argument culminated in the proposition that all considerations should yield to this one; that peace and quiet would be restored to the country as soon as Kansas became a state with all the rights of a state. English, on the other hand, now asserted that peace and quiet would be given to the country by his bill, because it deprived Kansas, for an indefinite time, of the possibility of becoming a state, unless it agreed to the adoption of the Lecompton constitution under the form of adopting the land propositions.

The majority of the conference committee could not possibly have expected that the opposition would not notice this contradiction. Notwithstanding this, English neglected to support his assertion by even a single word. That was undoubtedly the wisest thing he could have done. In addition to all kinds of sophistry, formal legal arguments had been adduced for the men represented by Buchanan and the senate bill. In favor of the compromise patched up by English, even a Lecompton democrat had nothing to adduce, and the shrewdest anti-Lecompton democrat would not have been able to devise any-

<sup>1</sup> Stat. at L., XI, p. 166.

<sup>2</sup> See Crittenden's utterances on this point. Congr. Globe, 1st Sess. 35th Congr., p. 1815.

thing like an argument which would not have turned against himself.

English had called it a great political fact, staring the nation in the face, that the immense majority of the people of Kansas would have nothing to do with the Lecompton constitution; and now he said, in his bill, that it could be admitted under this detestable constitution if it would be satisfied with a small part of the public lands which were demanded by it for the state. This was the sheerest nonsense — if, indeed, it were not going over to the ground of the Lecompton democrats. For this condition was certainly not a concession that could reconcile the population to the "fraud," although the republicans rightly declared it to be an attempt at bribery.

The administration party treated this charge as a ridiculous absurdity, pretending to understand it to mean that the republicans wanted to make Kansas believe that the democrats intended to keep from it entirely the customary dowry of public lands, unless it earned them now by compliance in the constitutional question. But such an absurdity was far from entering the minds of the republicans; for the subventioning of the new states in this way for their school system and other public purposes had long been a custom so firmly established that no party would have ventured to depart from it, in a particular case, for party, political reasons. The complaint was based on the provision of the bill that Kansas, from the moment of its admission as a state, should receive five per cent. of the net proceeds of the sale of the public lands situated within its borders, for the building of roads and other internal improvements. The best land, said Wilson, had been already taken possession of by settlers, under the pre-emption laws, but had not been paid for, and the government had ordered the sale of large tracts

in July; the proceeds, he said, would amount to millions, and the poor territory, if it became a state by July 1st, would obtain hundreds of thousands which would be lost to it, if it rejected the English bill.

Wilson's estimates might have been too high; but that there were sums involved which were of no small importance to the territory, poor as it was in capital and not great in contributive power, could not be questioned. But the reward it was to receive, in case it accepted the Lecompton constitution, was insignificant compared with the punishment it was threatened with if it remained obstinate. The "great principle" of the Kansas-Nebraska bill received a new practical interpretation which cast almost everything that had hitherto been done in this respect into the shade. If the people of Kansas agreed to the adoption of the constitution which, according to the emphatic testimony of English, the Lecompton convention sought to defraud them into, congress was willing to consider the territory, in every respect, ripe enough to become immediately a state with all the rights of a state; but if they still opposed the fraud and the violation of all the fundamental principles of republican government, they were to be condemned to continue to bear, until they had reached a certain figure, all the hardships of the territorial condition which had repeatedly grown into crime-surfeited, chaotic anarchy; and congress was to leave Kansas this alternative, because, by that means, whatever Kansas chose, it would restore peace and quiet to the country. As a reason for this proposition, nothing could be adduced except that Kansas had no *right* to ask for admission into the Union before it had the population necessary for the election of a representative, and could not complain of injustice, as freedom of choice was allowed it. So far as the *right* was concerned, this claim was in-

contestable. But that was not the question. In the report on the senate bill, it was expressly declared that the population should be considered sufficient;<sup>1</sup> and the English bill adopted this view, in case Kansas said it was satisfied with the Lecompton constitution, but rejected it in case it did not. It measured, therefore, with different measures. It indeed left the population a choice, but under the exertion of a heavy pressure in favor of submission to the violence attempted by the Lecompton convention. Hence, English made himself an accomplice of the convention, but by doing so descended to a much lower moral level than it and its original defenders in congress, because of his own accord he gave evidence before the entire people that he clearly saw how deserved was the moral judgment passed by "nine-tenths of the people" on the intended outrage.

The democratic party, said Seward, knew no justice in the application of its principle of popular sovereignty; it has been convicted out of the mouths of the southern senators, Crittenden and Bell, and of the democrats, Douglas, Stuart and Broderick, and their associates in the house, of no longer holding the scales equally poised between freedom and slavery, but of intervening in favor of slavery against freedom.<sup>2</sup> In these words Seward appropriately and concisely characterized the new "compromise" that an anti-Lecompton democrat ventured to impute to the north. Even on the 11th of March, Polk of Missouri had declared, in the senate, that there was no pertinent reason against the admission of Kansas; that it had the requisite population was conceded and not contradicted.<sup>3</sup> The English bill

<sup>1</sup> "Conceding the sufficiency of the population."

<sup>2</sup> Congr. Globe, 1st Sess. 35th Congr., p. 1897.

<sup>3</sup> "All concede that she (Kansas) has the requisite population. No one raises an objection on this ground." Ibid., p. 1060.

now modified this to the effect that, as Collamer expressed himself, there were "people enough to hold slaves, but not people enough to enjoy freedom." The power of congress regarding the text of the constitution of a new state to be admitted into the Union does not extend beyond the question whether such constitution is republican. This was a dogma of the democratic party — one which had been for years constitutionally defended and politically lauded in numberless speeches. And now it was to be practically applied, by telling Kansas: According as you meet our wishes or not, with regard to your constitution, the conditions also change under which we shall approve your admission as a state. Originally it was the universal, and then for a long time, at least, the prevailing view, that congress might attach conditions to the admission of new states. On the other hand, the idea of indirectly forcing them to do what congress could not compel them to do directly, by giving them their choice between different conditions based on the principle of reward and punishment, was an acquisition now made, for the first time, by the partisans of the doctrine of popular sovereignty and non-intervention.

It was a long way from the substitution of squatter sovereignty for the Missouri compromise, with its absolute and perpetual prohibition of slavery, to a law that opened wide the door to a slave state made such against its will, without respect to the size of its population, but which demanded proof that the population amounted to at least ninety-four thousand, before the right of the territory was recognized to adopt a constitution which gave expression to the real will of its people. And the meaning of this was not: Kansas must yet wait an indefinite time, if in accordance with the wish of the great majority of its population it wants to keep its soil free from slavery; its

meaning was: Not until Kansas has, at least, ninety-four thousand inhabitants shall it free its soil from slavery. English's bill left Kansas a choice, but not a choice between freedom and slavery. The alternative, as Collamer rightfully said, was this: "If you vote for the land grants, you are to have this slave constitution; and if you vote against the land grants, you are to have slavery in your territory without a constitution. That is, you are to have a constitution with slavery, or slavery without a constitution; but slavery at any rate."

The majority of the senate was, of course, satisfied with this "compromise." Hunter's statement that, at the worst — that is, in case Kansas declined the offers of the bill — "a truce," at least, would be secured for some years, was just as unfounded as Buchanan's and English's prophecies of peace. But the slavocracy had gained time, and that, next to the immediate assurance of the lasting possession of Kansas, was the best that could be obtained for them. This really gave the slavocracy another chance; for a provision of the bill, hitherto unmentioned, saw to it that, in the final decision by Kansas, the old, unclean means might be again employed to the fullest extent.

The house bill had, by the provisions on the composition of the board who were to be intrusted with the elections provided for in it, guarded against this as far as possible. Of the four members, two were to be federal officials appointed by the president (the governor and secretary of the territory), and two persons holding office of trust elected by the people (president of the council and speaker of the house of representatives), while the presence of three members was required to pass a resolution; hence, equal representation and the impossibility of taking undue advantage by means of resolutions beyond

the control of the other side. The English bill added to these four members the district attorney — that is, a third federal official appointed by the president — and retained the provision respecting the number requisite to pass a resolution. Not only was the population to have one representative less than the government, but the three, entirely dependent on the administration, were, in the absence of the trusted representatives of the people, to have the right to pass binding resolutions. And the provisions as to the powers of this board of commissioners in relation to the election, Bennett, of New York, without the least exaggeration, summed up in the following words: "Unlimited powers, without appeal or revision." The history thus far of the elections in the territory made all commentary on the meaning of these changes superfluous. That the changes were caused by the very remembrance of that history must have seemed all the more certain to the opposition, as nothing could be adduced in justification of them except this strange claim: as it has been recognized that the president deserves sufficient confidence to allow him to place two of the officials appointed by him on the board of commissioners of election, the right has been abandoned to entertain suspicions of any kind because a third official nominated by the president has been made a member of the board of commissioners.

Even among the fire-eaters of the house, there were people who found no good flavor in this kind of legislation. Although Bonham, of South Carolina, and Quitman, may have been determined to vote against English's bill more by the fact that, as they said, it submitted the constitution to a popular vote and made Kansas a free state, still they expressly mentioned the dishonesty of the bill as one of the reasons for their surprising vote. But opposed to these two rare birds there were many "dis-

tinguished" members of the administration party who did full justice to the genius for getting out of a scrape displayed by English; and as Etheridge, of Tennessee, subsequently said in the house, declared his "a better bill than the senate bill itself."<sup>1</sup> The senate was in such a hurry to see it become a law that it not only disregarded its usual parliamentary courtesy, but violated the rules of the order of business. Notwithstanding Crittenden's request for postponement, the report of the conference committee was set for debate on the 26th of April, although the original bill could not even be read, because at the time it was not "in possession of the senate," but was before the house.

This inconsiderate pressure of the majority had no rational ground, unless they considered it necessary to oppose the storm of indignation of public opinion in the north, which was continually growing more violent, by their speeches and with all their power, in order to keep the sacrificial courage of the little body of men on whom the decision in the house depended up to the required point.

Their former associates and the republicans did not, indeed, make it easy for English's immediate followers again to bend the knee to Baal, after they had for months announced that the anger of Heaven and the scorn of men would fall on those who did not render obedience to the commands of his priests.

On the day before the vote in the house Marshall said that the republicans were, without exception, fully conscious of the fact that by the Montgomery bill they had agreed to admit Kansas as a slave state, "if it was the will of the people of Kansas." When Burnet, of Kentucky, questioned the correctness of this statement, sev-

<sup>1</sup> Congr. Globe, 1st Sess. 36th Congr., p. 441.

eral republicans cried out to him that Marshall was not mistaken; and Sherman declared that, to the extent of his knowledge, every republican in the house had voted with his eyes open;<sup>1</sup> but, he added: "We did it because the anti-Lecompton democrats had promised us, on their honor, not to depart from the demand for an honest application of their principle of popular sovereignty."<sup>2</sup> I, too, said Giddings, was made to believe that all Douglas democrats had bound themselves to the country, to themselves and their constituents, "to stand by that proposition forever; and that alone moved me, almost the last, to agree to the adoption of the Crittenden-Montgomery amendment." Campbell laid still greater stress on this charge on the following day. He alleged that, on the basis of caucus resolutions of the anti-Lecompton democrats, a formal agreement between them and the republicans had been entered into, in which the former had promised that under no circumstances would they vote for another motion; and he even stated that the caucus had appointed a committee with power to speak for the entire body.<sup>3</sup> Owen Jones declared

<sup>1</sup> "So far as my knowledge extends, every republican member of the house read, carefully considered and pondered over the Crittenden amendment, and voted for it with his eyes open." *Congr. Globe*, 1st Sess. 35th Congr., p. 1894.

<sup>2</sup> "But with the distinct understanding that the gentlemen from the free states, belonging to the democratic party, had pledged to us their faith and honor that they only wanted a fair, straightforward, open opportunity to carry out their principle of popular sovereignty in Kansas, and that they would stand by and adhere to the proposition made in that amendment. Relying with implicit faith upon this understanding, we voted for the amendment, and have steadily adhered to it." *I. c.*

<sup>3</sup> "The friends of Mr. Douglas were pledged, by those who were authorized to speak for them, as I understand, upon the high point of personal honor, to go for that proposition. . . . I would inquire

that he knew nothing of the appointment of such a committee, and contended that he had never given such a promise himself or authorized others to give such a promise in his name; he admitted, however, that he had "once or twice" taken part in a caucus, but avoided, above all things, to deny directly that his attitude warranted the republicans to assume that he was resolved to act like those who thought as he did, and who had made a formal promise. And the other renegades stopped in their defense at this line, just as Jones did. Had it then reached such a pass with the politicians that a notarial seal was necessary in order to have a right to require truth and fidelity from them? Nor was it every deserter of his flag who could say as much in his defense as Owen Jones. Samuel S. Cox, of Ohio, had publicly, and with an appeal to the name of God, boasted that his vote would "never be dragged in the Lecompton mire;"<sup>1</sup> and yet he now belonged to the majority of one hundred and twelve by which the English bill had been adopted, on the 30th of April,

of the gentleman from Pennsylvania (Owen Jones) whether he did not repeatedly meet in caucus with that portion of the democratic party known as anti-Lecompton men? and whether a committee was not appointed with power to represent and speak for the entire body?" *Ibid.*, pp. 1902, 1903.

<sup>1</sup> In a letter intended for publication, addressed to Colonel Forney and others, under date of February 6, 1858, he writes: "While I have a vote in this congress it shall never be dragged in the Lecompton mire. That is my deliberate judgment, and my irrevocable will. I cannot say or do otherwise, so help me God. Not while Douglas stands in the senate; not while Wise speaks from his Virginia vatican: not while Walker can give us wisdom or Stanton can utter truth, or Stuart can argue the law, or Forney can wield the pen, or the northwest can echo the aggregate thunder of these tribunes of the people,—shall this great wrong be done in the face of thirty millions of freemen." *Ibid.*, p. 1902.

against one hundred and three votes. On the very same day the senate adopted it by a vote of thirty-one against twenty-two.

In the house, scenes of violence had preceded the vote. Campbell subjected the majority to a real castigation by catechising them on the question whether the bill required a vote of the people on the Lecompton constitution. Cox received the heaviest blows. After Campbell had read the letter to Forney already mentioned, Haskin, of New York, informed the house that Cox had also condemned both English personally and the bill, in the severest terms, in a letter to the *Ohio Statesman*. Cox, and Lawrence of Ohio, who too had now returned to party orthodoxy as a repentant sinner, had expressed themselves in a similar manner against himself. Cox denied that he had characterized the bill and its author in the insulting manner alleged by Haskin, but admitted that it at first had seemed to him entirely unacceptable, and that he continued to have great objection to it, but still maintained that he adhered absolutely to every word he had written in his letter to Forney.

Even if one had become thoroughly versed in the zig-zag policy which the democratic party had followed for four years in regard to the slavery question, one needed more than ordinary dialectical acumen to consider it possible to prove that there was no contradiction in these three declarations. If Cox himself had not felt the hopelessness of this undertaking, he would not have met his assailants with a violence which was barely able to keep back the tears of impotent rage; and yet there was an unmistakable ring of truthfulness in the overflowing passion with which he called Heaven to witness that, from the very beginning to the present, he had acted in the best of faith, and was conscious of freedom from all im-

pure motives.<sup>1</sup> English too — so far as we are warranted to draw a conclusion from his private life and his subsequent attitude during the civil war — could say the same of himself. But the more respectable the renegades as private individuals were, the sadder was the light cast by their apostacy on the position of a large circle of the people on the terrible national problem. The most scandalous Judas-like bargains made by political aspirants and demagogues, who respected no principle but their own selfish interests, would have given incomparably less occasion for alarm than this moral cunuchism which led otherwise honorable men to play such antics with their own and the people's convictions, only that they might purchase from the slavocracy another postponement of the decision. They could not assert their principles and keep faith with the republicans without putting an end to the supremacy of the democratic party; the supremacy of the democratic party threatened more and

<sup>1</sup> The administration, however, did not consider him too good not to try to influence him with the "patronage," in accordance with certain maxims of reward and punishment. (Compare Congr. Globe, 2d Sess. 35th Congr., App., 175 ) The following, however, from the report of the Washington correspondent of the *Independent* of May 1st, warrants the assumption that even the radical republicans believed that he and his associates had been won over, not by bribery, but by persuasion: "From that moment (of the appointment of the conference committee) until the committee reported, the defections from the second division (the Douglas democrats) of the army were steadily going on. Up to Monday last (April 23th), however, enough stood by their pledges to make it certain that slavery would be defeated in its designs. The president was at work earnestly; and all the cabinet, it was understood, made the success of this measure a paramount question. Some of them were upon the floor of the house daily, and in earnest consultation with the refractory members, and slavery senators transacted more business in the house than they did in their own chamber. At last Ohio began to tumble." The *Independent*, May 6, 1858.

more to become the precondition of the preservation of the Union, and patriotic anxiety for the Union induced them, after a hard internal struggle, to prostitute themselves not only in the eyes of the world but in their own eyes; habit had given constitutional sophistry such power over political thought that these people were able to convince themselves that conscious self-degradation was ennobled by love of country. Not only the Union but American nationality itself had lost the right to continued existence, and therefore the possibility of continued existence, if self-degradation was the price to be paid for it.

When the vote was taken on English's bill, the twenty-three anti-Lecompton democrats of the house had been reduced to twelve. If the eleven renegades believed that they could confidently rely on the fact that the population of Kansas had become tired enough of the troubles, or that they would be so greedy for the material advantages offered as to agree also to this conscious self-degradation, their blindness to the consequences of their disgraceful treason to their own principles was explicable to some extent. Even then English's bill would have remained a sharp-edged weapon in the hands of the republicans, which they certainly would not have neglected to use with terrible effect; but the struggle of the two great parties for Kansas would thereby have been brought to a close; for all idea of a revolt of the republicans against the legal decision was excluded. But would this have justified the shout of jubilation with which Bigler, in the senate, had greeted the announcement that the house had adopted the bill—"the magnetic telegraph is spreading, with the speed of lightning, a message of peace all over the land?" If the earth had swallowed up all Kansas, and with it all remembrance of the contest over it, the struggle would still have to go on without

interruption,<sup>1</sup> because the slavery question could disappear only with slavery. What chapter in the history of the territory up to date warranted one to estimate so low the firmness and spirit of sacrifice of the men of Kansas in defense of the rights guaranteed them by the democratic party against that same democratic party? Would they, now that that party was divided, throw into the mouth of the sneaking fox what, at the price of their blood, they had snatched out of the jaws of the raging wolf, in the days of the border ruffians, while fighting the externally serried ranks of the democratic party? The lip-democrats from the free states, who sold the right of the self-determination of the people in whose name they had torn to pieces the perpetual charter of liberty of the northwestern territories, had now to listen to Crittenden, the slave-holding senator, when he told them: "I am perfectly certain" that Kansas will resist "all these temptations and reject your offers." If he was not deceived in this expectation, nothing could be gained by this bill; "not a straw, not the dust in the balance in which the peace of the country is weighed."<sup>2</sup>

<sup>1</sup> Lincoln on September 18, 1858, in Charleston. Debates between Lincoln and Douglas, p. 157.

<sup>2</sup> Congr. Globe, 1st Sess. 35th Congr., p. 1814.

## CHAPTER VI.

## THE "IRREPRESSIBLE CONFLICT."

The first session of the thirty-fifth congress lasted until June 14, 1858. Some of the questions which, after the passage of English's bill, had to be disposed of, were of much greater importance than could be inferred from the interest public opinion took in the deliberations concerning them. This fact could not teach the presumptuous narrowness of the routine politicians that it was not a happy thought to have given the republicans the nickname of the "party of one idea." Precisely because they were a party of one idea, the future belonged to them; for the intellectual and moral elasticity of the people became more and more completely absorbed with the struggle for this one idea. All else could excite no great interest except to the extent that it promised to be, directly or indirectly, of importance in the progress of this struggle. The attention with which a few questions were still followed was attributable not so much to these questions themselves as to their presumptive influence on the attitude of the masses towards the administration and the democratic party.

On the 18th of May, the bill for the admission of Oregon as a state was passed by the senate by a vote of thirty-five against seventeen, although everything that had been said in defense of English's bill, in reference to its provisions about the number of the population, was just as applicable here. The republicans very naturally threw a glaring light on the wry faces made by the members of the administration party at one another; but the majority of them — ten against six — voted, notwith-

standing, for the bill. They did not want to let Oregon atone for the sins of congress against Kansas, and estimated the gain which every increase of the free states would bring to the cause of freedom higher than the loss which would be caused to it by the direct strengthening of the democratic party in congress and in the electoral college. The administration party, on the other hand, did not believe that it should allow any considerations to weigh against this strengthening of the democratic party. The administration party might easily disregard the fact that it was obliged to expose its perfidious intervention against the free-state party in Kansas thus plainly; but it was certainly a great trial for the south to admit a free state without having the admission of a new slave state in prospect within any conceivable time. But Oregon was sure for the democrats: three, votes more or less, in the electoral college might easily turn the scales; and it became plain to the south, day after day, that in the next presidential election the decisive throw of the dice of fate would be cast.

That the bill at first lay quietly in the house was a matter of no consequence. It would be time enough if it were passed in the next session; and that it would be passed then might, considering the attitude of the republicans in the senate, be looked upon as almost undoubted.

If, therefore, Buchanan had good reason to be satisfied with the course of this matter, he was — at least so far as he was personally concerned — certainly much better pleased with the turn which things took in Utah. The debate on the so-called deficiency bill had caused him many unpleasant hours. Fifteen millions had been originally granted for the army, and now eight millions more were asked for it. Even if the coffers of the treasury had been full, and if normal prosperity had prevailed in

the economic condition of the country, this would not have been looked upon with equanimity. But trade had not yet, by any means, recovered from the crash of the preceding year; the revenues from the customs duties under the new tariff still flowed in scantily, and the government's coffers were still so empty that the country might be expected at any moment to hear the secretary of the treasury declare that recourse must be again had for money to the printing-press. And, in the first place, it was the campaign arbitrarily undertaken against the Mormons which had made this enormous extra demand necessary. The criticism would, therefore, not have been undeserved, even if the administration had proved that with the greatest economy and the strictest honesty the cost could not have been lessened one cent. But the contracts entered into for this expedition were not the least cause that led Toombs, in the senate, to express the conviction that, in the whole world, there was no government so corrupt as that of the United States.<sup>1</sup>

The bill was rejected by the house on the 8th of April, by a vote of one hundred and twenty-four against one hundred and six. The most material objection was, indeed, to the third section, which did not have reference to the army, but which, contrary to an express legal prohibition, granted extra remuneration to the appointees of the house. Reconsideration was resolved upon the very next day, and the bill passed by a vote of one hundred and eleven against ninety-seven. Still, the first vote, by which it was defeated, when twenty-seven democrats voted with the majority, contained a censure of extraordinary severity, and discontent over the Utah expedition had contributed not a little to the administration of that censure.

Buchanan might, therefore, look upon it as a special

<sup>1</sup> Congr. Globe, 1st Sess. 35th Congr., App., p. 358.

favor of Heaven that, immediately before the end of the session, a dispatch from Cumming, dated the 2d of May, reached the secretary of state;—one which, in his own eyes, completely and strikingly justified the policy he had pursued on the Mormon question. The message of the 10th of June, with which he transmitted it to the senate, informed the country that the two regiments of volunteers granted by the law of April 7th were now no longer needed, because the news received from the governor warranted the assumption that “our difficulties with the territory of Utah have been terminated.”

Others, indeed, might not come to this conclusion from that information with the same confidence. In a letter of Cumming's, dated April 15th, to Colonel Johnston, who brought the dispatch to the notice of the president, we, indeed, read: “I have been everywhere recognized as the governor of Utah,” and Brigham Young has, in repeated conversations, “evinced a willingness to afford me every facility which I may require for the efficient performance of my administrative duties.” He, however, also stated that a great many Mormons were packing up their property and moving away, without knowing whither themselves. Something said by Young seemed to imply that they would, perhaps, go to Sonora. And this embittered feeling of the people had, at least up to the sending of the dispatch, undergone no change, for it reported: “The masses everywhere announce to me that the torch will be applied to every house, indiscriminately throughout the country, as soon as the troops attempt to cross the mountains.”<sup>1</sup>

Even in the most favorable case, therefore, the president's declaration greatly anticipated events, unless, by the termination of difficulties, the unconditional subjec-

<sup>1</sup> Sen. Doc., 35th Congr., 1st Sess., vol. XIII, No. 67, pp. 2, 6.

tion of the Mormons was to be understood. But that a great deal more had been accomplished than could have been expected at the beginning of the winter was unquestionable. This was due most directly and in the fullest measure to a brother of the celebrated explorer, Kane, who was indebted to the Mormons for careful nursing in a severe illness, and who now most fittingly discharged that debt by mediating, with the approval of the government but in no official capacity, between its organs and Brigham Young. He had arrived at the camp in Fort Bridger on the 12th of March. Under the warm rays of the sun in spring both the snow and the courage of the Mormons had begun to melt away. On the 21st of March, Young held a "special council" in the Tabernacle, in order to come to a decisive resolution. We must, he said there, seek refuge in negotiation. If we take the initiative and shed the blood of the troops, the people of the United States, in their bitterness, will place unlimited means at the disposal of the government, and we will finally succumb in the unequal struggle.<sup>1</sup> If the government decided to keep the troops inactive a while longer, and, at the same time, try what it could accomplish by negotiation, there was, therefore, every prospect that an amicable settlement would be reached, provided both sides were satisfied with the restoration of a *modus vivendi*.

Temporizing was not to the liking of Colonel Johnston, but Cumming permitted himself to be induced to go with Kane to Salt Lake City in the beginning of April. Young, as we have seen, did not hesitate to submit externally; but Cumming purchased this submission with the promise that the troops should not come into the vicinity of the settlement, and should not interfere as

<sup>1</sup>See Stenhouse, *The Rocky Mountain Saints*, p. 385.

a *posse comitatus* until all other means had been exhausted.

In the meantime, on the 6th of April, Buchanan had issued a proclamation to the Mormons, in which he accused them of treason and rebellion, assured them that they would still remain entirely unmolested so far as their religion was concerned,<sup>1</sup> promised full pardon to all who would submit, and announced that the troops would not be withdrawn from the territory until the population manifested a proper feeling towards the federal government. On the 7th of June, Powell and McCalloch arrived as peace commissioners in Salt Lake City, with this proclamation. A gloomy quiet prevailed in the place. The hosts which had moved southward were already numbered by tens of thousands; and, unterrified by their fatigues and severe privations, others followed daily in their footsteps from town and country, as if this new chosen people of God were firmly resolved to wander forth once more into the unknown, pathless wilderness, in order, in complete isolation from the rest of the world, to seek a new place of refuge.<sup>2</sup> On the 10th of June, however, Young, Kimball and other elders of the church

<sup>1</sup> "Do not deceive yourselves, nor try to mislead others by propagating the idea that this is a crusade against your religion. The constitution and laws of this country can take no notice of your creed, whether it be true or false. That is a question between your God and yourselves, in which I disclaim all right to interfere. If you obey the laws, keep the peace, and respect the just rights of others, you will be perfectly secure, and may live on in your present faith or change it for another at your pleasure. Every intelligent man among you knows very well that this government has never, directly or indirectly, sought to molest you in your worship, to control you in your ecclesiastical affairs, or even to influence you in your religious opinions." Stat. at L., XI, p. 797.

<sup>2</sup> According to Stenhouse, loc. cit., p. 399, thirty thousand people participated in this new exodus.

came from Provo, where the fugitives were collecting, to negotiate with the commissioners. But opinions might differ widely as to whether the result of the negotiations came entirely up to the expectation to which Buchanan gave expression on the same day in his message. Johnston was, indeed, able to complete his march, begun on the 13th of June, to Salt Lake City without molestation. The Mormons' threat that he would find the country turned into a desert by the torch was not carried out. On the other hand, he only marched through the desolated city, and moved into camp on the other side of it in Cedar Valley. While, therefore, the Mormons had to be resigned to seeing their utter powerlessness to offer forcible resistance to the federal government proven in the most undoubted manner, the organs of the latter showed just as plainly that they were satisfied with this, and did not intend to hold down their defiant spirit with an iron hand until it was completely bent or broken, but rather considered forbearance towards them advisable and prudent to the extent of sparing them the humiliation of even a temporary military occupation of their capital. And that that spirit was not yet bent or broken was manifest enough from the fact that their passive resistance by no means ceased either immediately or universally. Not until Young had left Provo on the 5th of July, with the declaration that he had resolved to put an end to his voluntary exile, did the others gradually begin to return to their deserted habitations. They returned much more sober-minded than they had left, but not as contrite or converted sinners, nor in the least discouraged. They had recognized the necessity of acting more cautiously in the future; but they not only persevered unmoved in their resolution that, in the main, the condition of things would have to continue as it had been, but they were also

firmly convinced that the federal government had consented to allow them to so continue in consideration of their external submission.

Whether, as their leaders made them believe, Cumming and the commissioners had privately made them the most satisfactory promises, must remain undecided. The sequel, however, proved that the policy of the federal government needed only to agree with the declarations made in the proclamation of the president in order to realize this confident expectation of the Mormons. Buchanan's proposition that the constitution did not give the federal government a right to any legal procedure against religious convictions was unassailable. The principle that government had nothing whatever to do with the thought, but only with the acts, of the subjects of the state, is asserted in it without limitation. But the Mormons gave proof of their religious convictions; and this proof, in the first place, led, in consequence of polygamy, to a conflict with the moral convictions of the entire people and with the civil law based on these convictions—a conflict which, in the nature of things, could not possibly be lastingly endured; and, in the second, to the organization of a sacerdotal state, which, by its very essence, excluded the organic construction of a political community and subordination on principle to any external authority. But if this were so, what had been gained by the expedition? That it had opened or cured this abscess in the body of the Union was an illusion. So long as the Mormons, in accordance with the promises of the proclamation, might continue to enjoy the fullest freedom in the exercise of their religion, they would necessarily grow, although some of the worst symptomatic phenomena might be considerably allayed.

A generation has since passed. Congress has passed law after law, each more stringent than the preceding;

the courts have discharged their duty with a strictness that took no consequences into consideration; for years the pulse of the economic, intellectual and moral life of the rest of the nation has beaten along the lines of railway and telegraph through the territory; an ever-increasing number of unenlightened children of the world have settled among the Latter-Day Saints; but the Mormon question has not yet been solved. Hence we need not say anything more on how far from warranted Buchanan was in acting as if he had banished this question out of the world by his *posse comitatus* campaign. Yet the great sacrifices made were not entirely useless. The moment Mormonism was deprived of its isolation, an internal process of dissolution had necessarily begun; the fresh draught of air deprives the fungus of its conditions of existence. The hole made in the walls with which Young's political instinct had surrounded his church, by the incoming troops, was, indeed, not large — but it could not be stopped up again; and the Mormons did not resist the temptation gradually to enlarge it, because it was a channel for the coveted gold of the Gentiles. Young could secure respect for his command that the Mormons should abstain from all business with them all the less, as his own instinct of gain was so strong that he secretly acted counter to it himself.

At the time, however, the nature of the Mormon question was so little understood that a great over-estimate of the value of the results accomplished by the president's policy could not be a matter of surprise. If the message of the 10th of June had been his farewell greeting to congress he might, therefore, have hoped, perhaps, that it would shed a ray of light on the end of the session, which would, at least for some time, lighten the shadows which rested upon it and the previous history of

the administration. But although the legislators had already packed their trunks, they received a new message from the president on the 12th of June. He strongly exhorted them not to adjourn on the 14th, as they had determined, because the legislative decisions demanded by the financial situation could not be reached in two days and submitted by him to a conscientious examination, as the constitution required. Congress troubled itself little as to how the president might come out of the conflict between the urgent necessities of the treasury and his constitutional duty in respect to the examination of bills. The session was not prolonged, but a resolution was hurriedly passed authorizing a new loan of fifteen millions. No effort was even made by the employment of the oratorical art, of which an unscrupulous use was made on almost every occasion, to color the sad condition of the finances. Glancy Jones, the chairman of the house committee on ways and means, exposed it in terms so blunt and plain that one might have supposed he belonged to the opposition and not to the administration party. The twenty millions of treasury notes authorized by the law of December 23, 1857, were spent; the receipts of customs had fallen from almost twenty-one millions in the first quarter of the fiscal year to something over seven millions in the second quarter; it was of no use now to deliberate about a customs tariff, for the treasury would not get one dollar more from higher duties, because nothing was imported; the expectation that trade would revive had unfortunately not been fulfilled—that was the only consolation he offered the country.<sup>1</sup>

Even if the administration and the democratic party had been really as completely guiltless of all this as they be-

<sup>1</sup> See the message. *Congr. Globe*, 1st Sess. 35th Congr., p. 2981, on Jones's speech, *id.*, pp. 3018 *ff.*

lied or pretended to believe themselves to be, these facts were a bed of thorns against the points of which a much thicker cover than the triumphant message of peace of the 10th of June would not have been able to afford protection. The politicians recognized this so clearly that the apparent philosophic calm with which they stretched themselves on it was a subject of great surprise. To one thing only it could not be traced: the certainty of their powerlessness to change in the least the condition of affairs. The only satisfactory explanation was the assumption that they understood the signs of the time well enough to be firmly convinced that these questions, heavily as they might weigh in the balance, under ordinary circumstances, could not now decide on which side the balance would turn in the party struggle.

The wordy battles which were immediately begun whenever the fall elections were impending, as well as the daily utterances of the press, must have forced the recognition of this fact on those who were most stubbornly determined by their wishes to close their eyes to it. Both sides naturally showered their blows wherever they thought they discovered a weak spot or defect in the armor of their opponents; but in attack and defense both sides employed all their strength, from the very start, only on what related to slavery; — which had never before happened to the same extent in a case in which no concrete question called for an immediate decision. This was still true, in the main, after Kansas, on the 2d of August, had rejected the offer of English's bill, by a vote of eleven thousand three hundred against one thousand seven hundred and eighty-eight.<sup>1</sup> This majority was so overwhelming that even the most sanguine slavocrats were at last obliged to abandon all hope of forcing Kan-

<sup>1</sup> Wilder, *Annals of Kansas*, pp. 186-188.

sas into the Union as a slave state. Now the only question was how long the slavocracy and their northern allies would be able to prevent its admission as a free state; and this was a matter of relatively inferior importance. So far as Kansas was henceforth used by the newspaper writers and orators as a subject at all, it was rather as the most obvious and striking illustration. The real kernel of the argument was the discussion of the general principles. This was in itself the most significant and most menacing sign of the times; for people engaged in empty wrangling about sterile abstractions, not because they had no concrete object to battle for, but although, at the moment, nothing definite was to be gained or lost. The burning questions of the day were treated by them as of secondary importance, and they concentrated all their strength on the struggle over the differences of principle on the slavery question. Politicians who delight to pour out their floods of eloquence on principles are frequently doctrinarians who mask the impotency of their statesmanship and their will under a parade of glittering generalities. But to now interpret the going back to the ultimate causes of the struggle over the slavery question in this sense would have been a dangerous error. On the contrary, in this going back a powerful expression was given to a terrible deepening of the contest, for it announced an awakening to the recognition that the decisive fact was the existence of a difference of principle. The more thoroughly this difference was discussed the clearer it must become that all the concrete questions which had been fought over with so much passion were the natural and inevitable consequences of it; and, whether people wished it or not, the discussion had to be continued until its last, logical consequence was drawn and expressed so clearly that there could be no mistaking it.

This Seward did, on the 25th of October, in a speech at Rochester; and his words resounded like a mighty clap of thunder through the whole country. A storm of indignation broke loose upon him, as if he had committed an unheard of and horrible crime. A doubt seemed to be possible only on one thing: that is, whether the amazement or indignation excited by his speech was the greater. And yet he had only said what all felt. Nay, only because all felt that he had so characterized the real nature of the struggle in a few words that it could never again be hidden in the mist of deception was the impression these few words made so powerful. The speech was a historic act, the import of which could not yet be measured; not because of the ideas to which it gave expression, but only because of one sentence of happy invention — “it is an irrepressible conflict.”

A sentence of happy invention:—this is evident not only from the rest of the speech, but becomes still more apparent from the fact that Seward was, so to speak, struck completely blind when the last consequences of the words became accomplished facts. His speculative powers of thought were sufficiently acute and well trained to enable him to discover the concisest formula of the problem, and he had the courage, in his speculative thinking, to pursue the logical consequences to be deduced from it to the end; but he had not the statesman-like genius or instinct to discover, from the previous actual development of events, how their subsequent actual development must take place in accordance with the formula he had rightly constructed. The saying invented by the thinker was a blast in the trumpet of judgment, but the inferences of the statesman drawn from it amounted to a hope which was not only destitute of all real foundation, but which could not by any possibility be ful-

filled, if that saying correctly described the nature of the struggle.

"The two systems of slave labor and free labor," said Seward, "are more than incongruous — they are incompatible. They have never permanently existed together in one country, and they never can; . . . it is an irrepressible conflict between opposing and enduring forces; and it means that the United States must and will, sooner or later, become either entirely a slave-holding nation or entirely a free-labor nation. . . . It is the failure to apprehend this great truth that induces so many unsuccessful attempts at final compromise between the slave and free states, and it is the existence of this great fact that renders all such pretended compromises, when made, vain and ephemeral."<sup>1</sup>

Generally only these sentences are quoted from the celebrated speech, and, out of them, a wreath is woven about Seward's head to which he had no claim. A conclusion had to follow them; for otherwise the speech would have been an academic essay from the professional chair, and not the political confession of faith of a statesman who already occupied the first place among the leaders of his party in congress, and who had the best prospects of being in two years its presidential candidate. If these claims were well founded, what became of the constitution which left the states free to choose between the two systems? Could or would the prophecy be fulfilled and still this constitutional right of the states be preserved? Not until this question was answered could these propositions, no matter how unassailable, become the basis of a political programme; and their proclamation had no political significance except to the extent that they were a political programme. Seward did not ignore this.

<sup>1</sup> Recent Speeches and Writings of W. H. Seward, pp. 291, 292.

His answer to the question was: "If these states are to again become universally slave-holding, I do not pretend to say with what violations of the constitution that end shall be accomplished. On the other hand, while I confidently believe and hope that my country will yet become a land of universal freedom, I do not expect that it will be made so otherwise than through the action of the several states co-operating with the federal government, and all acting in strict conformity with their respective constitutions."<sup>1</sup> Whether the politicians continued or stopped the useless work of subtly devising compromises, the people might contemplate the further development of the irrepressible conflict with the calmness with which one hears the angry hiss of a venomous serpent without its sting; for the realization of the first alternative was and would remain an impossibility, even if the constitution were torn into shreds.

Seward was universally considered as the statesman *par excellence* of the republican party; and he possessed the qualifications demanded by the school-like, not to say guild-like, statecraft which dominates in cabinets and embassies, more fully than any other republican politician. But precisely on this account he did not perceive that his reasoning excluded a peaceful, constitutional solution of the problem; for he was certain *a priori* that the possibility of such a solution could not be questioned, because the possibility of the permanent existence of the Union without a violation of the constitution had evidently to be the fundamental presupposition of the entire action of every statesman who was faithful to the constitution.

Another republican who, until within a few months, had occupied so modest a position among the politicians of the party that the great majority of the people knew

<sup>1</sup> Recent Speeches and Writings of W. H. Seward, p. 293.

only his name, or even not that, had, three years before, become thoroughly convinced of the irrepressibleness of the conflict, without falling into the contradiction by which Seward overthrew his own reasoning. True, even he had not followed out the chain of thought to the last, frightful consequence; but he had simply broken it with a deep sigh, leaving the matter in the hands of an all-wise and all-merciful God. On his way through life he had been able to gather only a few crumbs of methodical statecraft, but for that very reason he made no presumptuous over-estimate of its power. Much as he might wish that its postulates might be found in harmony with the reality of things, he viewed facts too naïvely and soberly to couple, like Seward, the absolute negative proclaimed by the latter, and in accordance with his own interpretation, with the confident affirmative to be inferred from that arbitrarily presupposed harmony. He too was far, very far, from fully understanding what was involved in the irrepressibleness of the conflict; but he might come to understand it, if he continued in the path into which the simple truthfulness of his political thought had led him; while Seward, with his Rochester speech, could never bring the ship of state into the right course, for either his compass or his chart was wrong. Hence, in Abraham Lincoln, a much more dangerous enemy arose against the slavocracy than in the senator from New York who was so grossly abused because of his Rochester speech, but not because Heaven had given him to the people as a political genius and savior. Seward was not only far superior to him in general culture and special training as a statesman — he surpassed him also in natural endowments. But Lincoln had gone through a school which more than compensated for all this; and nature had lavished on him the gifts which might, in that school,

develop into the intellectual powers and qualities of character which would be needed more than all else by the man in whose hands the helm was to be placed during the storm.

He was born in a slave state,<sup>1</sup> and grew up in a free state in the poverty and privation of pioneer life. What he was indebted to the schoolmaster for would not have fitted him to fill the place of a teacher of an elementary class. But while his muscles were gaining extraordinary power behind the plow and in the steady use of the ax and spade, he laid, in his leisure hours, by unwearying industry and earnest, intellectual and moral labor, the broad and deep foundation of his future historical greatness. Yet he would himself certainly have made merriest over it, if he had heard it prophesied, during these years, that he was to be called upon to play a part of any importance in the destinies of his country, to say nothing of a part of such importance that not only his grateful countrymen, but the judgment of history, would assign him a place immediately after, if not equal to, Washington's. It even seems as if, at this time, he had not the smallest spark of ambition, in the ordinary sense of the word. Neither can it be said that it in any way led him to the situations in which fate placed him. He was only conscious that the lot which had fallen to him at birth, from fortune's wheel, was almost a blank; but he recognized, at the same time, that a persevering will was sufficient to enable him, with the development of this gigantic new world, to grow into a position in life which might never perhaps be brilliant, but which would improve rapidly and steadily. This gift which is laid in the cradle of every American he was resolved to turn to account, for he was

<sup>1</sup> On the 12th of February, 1809, on the farm of his father, Thomas, in Hardin, now La Rue, county, Kentucky.

certain that he possessed the power to will calmly and soberly. He seemed not to have yet formed any idea as to the special manner in which he would become the architect of his own fortune. Until the time had come when he could use his own judgment in choosing between the opportunities life might afford him, he was satisfied with the consideration that knowledge and intellectual ability are a power in every calling. In his reading, he was spared the trouble of a choice. He had to take what chance threw in his way; and, although he did so, the number of books he could procure was very small. But he not only read them, but studied them in such a way that he mastered them completely and for all time. He dwelt on every new conception and every half-understood idea with imperturbable perseverance, until he grasped it with such clearness that he could give it a form in which it became intelligible to minds much less well-trained than his own. The intellectual discipline he thereby acquired was worth more than the biggest bag of knowledge he could have carried away from the desk of a school. But this quiet, unwearying struggle, without extraneous help, without the incentive of a direct, practical object, which, notwithstanding he engaged in with all his strength, was, besides, a moral act; and all the more so because it had not its origin in an ardent, innate thirst for knowledge. Without being indolent, Lincoln was not one of those to whom labor, whether intellectual or physical, is a pleasure. And if, notwithstanding this, he not only worked as much as, and at what, he was obliged to, he did so partly because labor was the only means of success in life, but partly also because he had so lively a sentiment of the moral importance of labor in general that he could not do otherwise than prosecute the intellectual labor to which he had once subjected himself, with the deep, sac-

rificing earnestness which is the precondition of that sentiment being developed to a clear understanding. Equipped with few acquirements, but with a confidence in his intellectual strength, which, with all his modesty, was as strong as that in his muscular power, because like the latter its capacity had been tested long enough, he left the paternal roof and launched his ship on the broad stream of American life.

The old figure may be taken here in its literal sense, for the real beginning of Lincoln's career was as a boatsman on a trip on the Mississippi to New Orleans. After some time he repeated the journey in the same capacity. The scenes of slave-life which he saw in New Orleans made a deep impression on him. It is not at all improbable that, as it is related he said himself, they decided his position on the slavery question. But we must not suppose that the impressions made on him by slavery were so overwhelming that they naturally ripened into a resolution to seek his real task in life in combating the "peculiar institution." He had not the temperament to become a fanatic, nor was his religious feeling of such intensity as to prompt the thought—and especially at so young an age—of his devoting his life to the service of a definite, ethical idea. He was not only a genuine, matter-of-fact American, but all his thoughts and feelings were still too directly and too completely under the influence of rough, backwoods life, for the sufferings of the slaves to throw him into sentimental paroxysms of marked violence. But the kind-natured eyes of a child in the surprisingly homely face of the uncouth giant told of a warm heart, to which the weak and the unfortunate could always confidently appeal, while a bright mind looked out from them; one which, under the guidance of such a heart, must have already learned too well how to

distinguish between right and wrong, to pass such a wrong unmoved. The peculiar, melancholy streak in the nature of the inimitable anecdotist, whose frequently coarse stories made his hearers roar with laughter, received nourishment here; and the germ which had been implanted in him by his own observation found in the innate truth of his nature, and in the moral earnestness of his endeavor, the most nutritious soil. But we are undoubtedly warranted in assuming that the deepening of his thought on slavery did not begin until many years later, for we see it then keep pace exactly with the development of the struggle of parties about it; and it remained characteristic of him to the last, and was of immense importance during the civil war, that he never, or in any particular, went in advance of the time. Besides, he was still not only intellectually too immature, but he had not the leisure necessary to occupy himself tenaciously, profoundly and earnestly with problems of such magnitude. If his thought, will and action had not had, for a long time more, the one aim to become something himself, he would scarcely ever have been able to co-operate, in any important way, in the solution of the slavery question.

He had tried many things before he was admitted to the bar in Illinois. He had been a clerk in a store, a shop-keeper and surveyor — first as an assistant to the same John Calhoun who was afterwards to achieve such sad celebrity as president of the Lecompton convention. As a merchant he gave proof of no great capacity, and as a surveyor he merely discharged his duties with satisfaction, but did not, like so many adepts in that art, lay the foundation of a fortune of his own by speculation in land. By his political activity he began slowly to climb round after round of fortune's ladder. There were at this time

no real professional politicians in the young state, and he certainly was not one. But, considering his interest in all public affairs, it was natural that he should take an active part in the agitation preceding elections. His gift of oratory, materially helped by the great personal affection felt for him, and emphasized by his powerful gestures, soon brought him a local reputation. The success he met with in this field gave him an increased liking for it, and finally decided his choice of a profession. In the younger states politician and lawyer were coincident ideas much more than in the older states. As a minimum of legal knowledge sufficed for admission to the bar, it was almost a matter of course that the young, struggling politician who had to make a living should become a lawyer. When he thundered his monologues from the stump, or paraded his readiness and his wit in general conversation at the street corners, before the court-house or about the glowing stove of the tavern, he acquired a clientele for himself who were ready to place their cases before judges and juries in his hands, and, on the other hand, the courtroom was the high training-school for the stump and the tribune. In these growing commonwealths, lawyers and politicians could make their way without going to great expense for printer's ink and lamp oil. Success depended here, incomparably less than under more developed and more stable circumstances, on knowledge; and one attained it most easily and most certainly by continually mingling with the people in their daily life and avocations.

In the younger states it is seen, more clearly than anywhere else, that in the United States the sole source of all power is the people; and the people stand most readily and firmly by those in whose leadership the pulse-beat of their own thought, feeling and will is felt most powerfully. But this does not imply that the masses begin to

turn away from a leader when he goes beyond a certain line close to their own intellectual and moral level. So long as they feel that he has not become alienated from them at heart, they grow prouder of him the higher he towers above all; for his greatness raises themselves in their own eyes. Hence, notwithstanding the brilliant success which may be achieved in the United States with the aid of the arts of the demagogue, the politician, even there, builds most securely, who does not descend to the level of the masses, but who endeavors, in his own efforts towards a lofty goal, to lift them up with him by pure means. If Lincoln wished to do this he had to begin to give his intellectual ability a much greater breadth and much greater depth than it had hitherto had, by earnest labor. This he did by honest industry. His legal book-knowledge, indeed, never exceeded rather narrow limits; but, by the study of the cases confided to him, he trained his power of logical thinking so thoroughly that, notwithstanding, he gradually became a lawyer of great distinction. He learned quickly and surely to discover the decisive points, and acquired such skill in the art he had practiced early, of clothing his thoughts in the simplest and clearest form, that competent judges said that his statement of a case was so convincing that argument was scarcely necessary in order to pronounce a correct judgment. Greater praise could hardly have been bestowed upon him; for this meant that the lawyer needed only always to serve his client in such a way as to remain, at all times, an honest servant of the law and of justice.

This high moral earnestness became more and more characteristic of his professional activity as his intellectual development advanced, and it entered also into his political life in ever-increasing measure. By his efficiency in the legislature (1834-1842), he worked himself

into so distinguished a position in the party that he — the only whig in Illinois — was elected by a great majority to the thirtieth congress (1847–1849), although the opposing candidate was the popular preacher, Cartwright. According to the customs of the party at the time, in Illinois, a re-election was absolutely excluded, and on that account alone the part he played on this, his first appearance on the national stage, had to be a modest one. Notwithstanding this, he had the courage to take the initiative in a step in the slavery question which might have had far-reaching consequences if it had been crowned with success. And it seemed for a moment that this was not impossible; for his propositions were not only unquestionably capable of being carried out, but were so evidently drawn up in the spirit of a really “honest broker” that the representatives of the two opposing camps, who first obtained information of it, considered it acceptable. The bill introduced by him on the 16th of January, 1849, for the gradual abolition of slavery in the District of Columbia, met with the approval of the mayor of Washington as well as of Giddings. As it not only assured full compensation to the owners of the slaves, but provided that the law should not go into force until after it had been established by a vote that the population of the District was in favor of it, it must seem at the first glance less surprising that Colonel Seaton agreed to it than that Giddings did.<sup>1</sup> Since Lincoln, as appears from

<sup>1</sup> Giddings writes on the 11th of January, 1849, in his journal, on the considerations that determined him: “This evening our whole mess remained in the dining-room after tea, and conversed upon the subject of Mr. Lincoln’s bill to abolish slavery. It was approved by all; I believe it as good a bill as we could get at this time, and was willing to pay for slaves in order to save them from the southern market, as I suppose every man in the District would sell his slaves if he saw that slavery was to be abolished.” John G. Nicolay and

Seaton's questions, did not wish merely to make a demonstration, but actually hoped for success, his bill really only proved how deeply sunk in optimistic illusion he still was as to the nature of the struggle. Had not even the most moderate representatives of the south for years declared the abolition of slavery in the District, without the consent of Maryland and Virginia, a breach of good faith? Did not the slavocrats know how greatly all their successes hitherto had been facilitated by the fact that the federal capital was situated in the domain of slavery, or had they lost all sense of the importance of moral defeats? Was it not a presupposition of every project of emancipation that slavery was an evil? And how far were the great majority of slaveholders still from admitting this in words! The bill was an invitation to the District to give its consent to a terrible blow at the interests of the slavocracy, and wanted to pay for it out of the federal treasury; that is, in part with the money of the south. It must, therefore, have been unacceptable to the representatives of the south in proportion as it offered more to the people of the District, and especially to the slaveholders in it.

The struggles of the next six years made Lincoln understand that his bill was a chase, and why it was a chase, after an intangible shadow. In the remarkable letter of August 15, 1855, to which reference was made above, he says: The hope of a peaceful extinction of slavery is a delusion, because the south will not give it up.<sup>1</sup> The fact

John Hay, Abraham Lincoln (*The Century Magazine*, February, 1887, p. 533), after the *Cleveland Post* of March 31, 1878.

<sup>1</sup> "Since then (a speech in which Robertson had spoken of the peaceful extinction of slavery) we have had thirty-six years of experience; and this experience has demonstrated, I think, that there is no peaceful extinction of slavery in prospect for us. . . .

"That spirit which desired the peaceful extinction of slavery has

that this was the attitude of the south towards the question had long been well known to the whole people. The point of significance was that Lincoln had the courage of the truth to admit to himself that from that fact it followed directly that the peaceful extinction of slavery was impossible. While Seward, three years later, in his Rochester speech, still endeavored to deceive himself and the people on this subject, Lincoln even now declared the irrepressibleness of the conflict in words from which it was clearly evident what would be the final issue. "Our political problem is, 'Can we, as a nation, continue together *permanently forever* — half slaves and half free?'" that is: Is the permanent preservation of the Union, under the present constitution, possible?<sup>1</sup>

But what was gained by the fact that Lincoln saw farther than Seward, if his two concluding sentences, "The problem is too mighty for me."<sup>2</sup> May God in His

itself become extinct with the occasion and the men of the Revolution. Under the impulse of that occasion nearly half the states adopted systems of emancipation at once; and it is a significant fact that not a single state has done the like since. So far as peaceful, voluntary emancipation is concerned, the condition of the negro slave in America, scarcely less terrible to the contemplation of a free mind, is now so fixed and hopeless of change for the better as that of the lost souls of the finally impenitent. The autocrat of all the Russias will resign his crown and proclaim his subjects free republicans sooner than will our American masters voluntarily give up their slaves." Nicolay and Hay, Abr. Lincoln, *The Century Magazine*, May, 1887, p. 866.

<sup>1</sup> This, however, does not mean that he even now answered the question unqualifiedly in the negative. Rather is it certain that in his case, too, the perception of the fact could not prevail over his wish. In the presidential campaign of 1856, he said in a speech at Galena: "All this talk about the dissolution of the Union is humbug — nothing but folly. We do not want to dissolve the Union; you shall not." *Ibid.*, May, 1887, p. 109.

<sup>2</sup> In the previous year (1854) he had said in a public speech at Peo-

mercy superintend the solution," were intended to announce that he was resigned to let the inevitable take its course? The most important thing was not whether what was right was recognized, but whether it was done. Even some months before Seward had cast the fire-brand term "irrepressible conflict" among the people, Lincoln had proven that in this respect he would be a much more reliable leader of the republicans than many of the most notable men in the party, who were not very far from believing that its whole political judgment and conscience were personified in themselves, and who saw this bold assumption generally recognized by a large circle of the people.

Douglas's attitude towards the Lecompton question was, as we have seen, consequent on the great pressure brought to bear on him. As early as in the senatorial election of 1855, it became evident that Illinois no longer belonged to the absolutely "safe" democratic states. The democrats, indeed, still had the majority in

ria: "If all earthly power were given me, I should not know what to do as to the existing institution." His first idea would be to send all slaves to Liberia. Closer reflection showed, however, that, if such a course were really possible, they would be condemned to certain destruction. "What then? Free them all, and keep them among us as underlings? Is it quite certain that this betters their condition? I think I would not hold one in slavery at any rate; yet the point is not clear enough to me to denounce people upon. What next? Free them, and make them politically and socially our equals? My own feelings will not admit of this; and if mine would, we well know that those of the great mass of white people will not. Whether this feeling accords with justice and sound judgment is not the sole question, if, indeed, it is any part of it. A universal feeling, whether well or ill-founded, cannot be safely disregarded. We cannot, then, make them equals. It does seem to me that systems of gradual emancipation might be adopted; but for their tardiness in this, I will not undertake to judge our brethren of the south." Debates between Lincoln and Douglas, p. 74.

the legislature; but the split which the slavery question had made in the party had led to the defeat of the candidate of the "regulars." This was due, in no small measure, to Lincoln's willingness to sacrifice himself personally for the sake of great tangible interests. He was the candidate of the whigs; and the latter demanded of the democratic opposition that they too should vote for him, because the struggle against the encroachments of the slavocracy must take precedence of all other considerations, and because in every alliance the weaker should leave the leadership to the stronger. The anti-Nebraska democrats would, however, not be convinced by this reasoning, and at first none of the three candidates received the constitutional majority of all the votes cast. But some of Lincoln's partisans soon became tired of the struggle, and, in order to prevent the election of a Nebraska democrat,<sup>1</sup> he had, at the last moment, induced the adherents who had remained faithful to him to follow the minority's flag and to cast their votes for Trumbull. The assertion of his opponents that a formal contract was then entered into, according to which the democratic opposition had bound themselves, in the next election, to vote for Lincoln, was entirely baseless;<sup>2</sup> but the largest part of the whigs and anti-Nebraska democrats had since then become fused into the republican party, and the slavocracy had uninterruptedly carried on the

<sup>1</sup> The regulars had dropped their own candidate, Shields, and made Governor Matteson their standard-bearer, because he was such a favorite, on account of the part he had played in the politics of the state, that a part of the opposition finally overcame their objections in respect to the national question.

<sup>2</sup> According to Douglas's statement, the original agreement was the reverse of this: first Lincoln and then Trumbull. See his statement and Lincoln's answer. Debates between Lincoln and Douglas, pp. 67, 68, 73, 84, 90.

most effectual propagandism for the latter. Notwithstanding the extraordinary popularity, therefore, that Douglas enjoyed in Illinois, his re-election would not have been at all certain, even if the party had been unanimously in favor of it. Not to alienate the great body of it from himself, he had to fall under the displeasure of the slavocracy and the administration, and his defeat was, therefore, among the possibilities. But suddenly he saw a prospect that what he had lost on the one hand by the battle against the so-called Lecompton swindle he might gain on the other a hundred and a thousand fold.

Some of the most influential spokesmen of the radical wing of the republicans began zealously to argue that their party comrades in Illinois should abstain from putting up a candidate of their own and should support Douglas's candidacy. Wilson, who certainly was not, in other respects, among the pusillanimous who on every occasion were able to find an excuse for forgetting the maxim *principiis obsta*, laid so much stress on the strengthening of the alliance with the anti-Lecompton democrats, that, for the republicans to prevail on themselves to march under the flag of the author of the anti-Nebraska bill, seemed to him to be only a proof of ability for cool, calculating, practical politics.<sup>1</sup> Burlingame,

<sup>1</sup> He certainly knew at this time that, as he relates in his work, *Rise and Fall of the Slave Power*, II, p. 563, Douglas, some days before the vote on the English bill, in a consultation of the anti-Lecompton democrats, "while avowing his own opposition to the bill, stated it as his opinion that those who had hitherto opposed the measure might consistently go for it, because they could claim that it did 'virtually' submit the question at issue to the people." On the other hand, it must be questionable whether, spite of this wavering attitude of Douglas, or rather precisely because of it, that is, in order to "strengthen his knees," he did not wish to put him under obligations to the republicans. An authentic declaration on this point by himself has not yet, as far as I know, been acknowledged.

who was almost equal in the violence of his declamation and denunciation to the southern fire-eaters, called upon the youth of the land, in a speech in congress, to rally around this brave champion. The hot-headed Greeley went to Douglas's house to confer with him, and gradually talked himself and wrote himself into a certain enthusiasm for the idea, so that he treated those who would not be convinced of its greatness with bitter scorn as hopelessly stupid in matters political.<sup>1</sup>

Lincoln had been for a long time the designated candidate of the republican party. The history of his last electoral campaign was not yet forgotten. Perhaps this or that new ally of Douglas hoped that he would do as he had done before — induce his friends to drop him and go over to his rival for the sake of the good cause. It may be asserted with certainty that, by doing so now, he would at most have sacrificed his own candidacy in favor

In the work mentioned (II, p. 567), he says that only he "and other members of both the senate and the house were led (by the statements made by Douglas in the conferences with them) to believe him to be in earnest, and that he would be practically fighting their battles in the coming presidential contest. His repeated declarations that he was fully committed to fight the thing to the end, that he had 'checked his baggage and taken a through ticket' with the belief that he would be re-elected in any event, led several of the republicans to look with favor upon his return to the senate, in the confident expectation that it would tend to divide and disrupt the democratic party, and aid in the election of their candidate for the presidency."

<sup>1</sup>On this whole matter, see Kellogg's speech of March 13, 1860. *Congr. Globe*, 1st Sess. 36th Congr., App. pp. 157-164. Compare, also, Hollister's *Life of Colfax*, pp. 119-122. In Illinois it was believed for a time that even Seward was not unsympathetic toward the plan. See Lincoln's letter of June, 1858, to Wilson, in Nicolay and Hay, *Abraham Lincoln, The Century Magazine* July, 1887, p. 338.

of that of some other republican. In Illinois, not only could people not see that the good cause was best served in this way, but, even leaving that entirely out of consideration, they were not at all willing that the wise men of the east should dictate to them what they had to do or not to do; and the history of the project became an event of great importance, because this fact found very clear expression. If the slavery question imperiled the Union, the west — that is, the central region of the continent — was, because of its geographical position, interested in an incomparably greater degree than the east in the further development of the struggle. Of this it became every year more and more clearly conscious, and therefore more and more firmly resolved not to allow its position on that question to be determined either by the east or the south, but to grasp the balance itself with a firm hand. The unanimous nomination of Lincoln was the answer given to the obtrusive counselors of the republican state convention at Springfield.

It was at first hard for Greeley, in the pride of his infallibility, to look at the wicked game with favor. He gave vent to all his feelings in a letter in which he rebuked the republicans of Illinois as if they were bold, headstrong school-boys.<sup>1</sup> The high-flown castigatory lect-

<sup>1</sup> On July 24, 1858, to Joseph Medill, of Chicago. "You have taken your own course — don't try to throw the blame on others. You have repelled Douglas, who might have been conciliated and attached to our own side, whatever he may now find necessary to say or do, and, instead of helping us in other states, you have thrown a load upon us that may probably break us down. You know what was almost the unanimous (!?) desire of the republicans of other states; and you spurned and insulted them. . . . You have got your elephant — you would have him — now shoulder him." *Loc. cit.*, p. 387. The authors remark that they had not seen the original but only a copy

ure concluded with an exhortation to Lincoln, at least, not to swerve a hair's breadth from the principles of the party. If he does so, "he is lost and all others sink down with him." Right as this advice was, to receive it now from Greeley's lips must have seemed exceedingly comical to Lincoln. In his speech before the state convention he had subjected the proposition made by Greeley and his associates to a destructive criticism; and he did not assign reasons of expediency only for its rejection, but gave his speech the character of a solemn protest, because the proposition involved a pusillanimous surrender of the principles of the party, for which no reason could be advanced, and which must have dangerous consequences, precisely because the struggle was one of principle, and because, therefore, fidelity to principle was an absolute precondition of success.

It was a noteworthy speech: so simple, in the formulation of its ideas, that even a child could understand it, and still of a statesman-like depth incomparably greater than that of Seward's Rochester speech. The irrepressibleness of the conflict was the starting-point of his entire reasoning. He gave this idea such tangible definiteness that all that remained for Seward, four months afterwards, was to give the fact proved by Lincoln the name that most properly described it. Lincoln had not gone backwards since he had written the letter to Robertson, referred to; but his vision became clearer and clearer with the development of events. In his introductory sentences, he declared what Seward had stated would be certainly avoided, to be an imperative

of the letter, and therefore could not assert the truth of every word. As Greeley's handwriting was very illegible, it would be well, perhaps, to put an interrogation mark after the surprising conclusion: "He (your elephant) is not very heavy after all."

necessity. Even he could not see, in all its frightfulness, what lay in the womb of the future; but he recognized that an irrepressible conflict must end in a violent clash between the opposing forces, and could not gradually die out except after such a clash, as the waves of the sea of themselves gradually subside with the wind. "The agitation of the slavery question," he said, "will not cease until a crisis shall have been reached and passed. 'A house divided against itself cannot stand.' I believe this government cannot endure permanently half slave and half free. I do not expect the Union to be dissolved — I do not expect the house to fall; but I do expect it will cease to be divided. It will become all one thing or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike lawful in all the states, old as well as new — North as well as South."<sup>1</sup>

Caviling Greeley still claimed, in 1860, that the republicans of Illinois "would have done wisely" to give their assent to Douglas's re-election; for "it would have been an act of magnanimity — a testimonial of admiring regard for his course on the Lecompton bill, which would have reflected honor alike on giver and receiver, and could have done harm to neither." The fundamental propositions of Lincoln's entire argument had led him to assert the very reverse on every point. How, he asked, could the republicans be placed under the slightest obligation of gratitude to Douglas because he quarreled with the president on a question on which he and they had always been of the same opinion? He had not advanced a single step towards them — he remained where he had

<sup>1</sup> Debates between Lincoln and Douglas, p. 1.

always been; and that made him an utterly worthless ally of the republicans. A journal with a leaning towards him had stated that his powerful aid would be needed to prevent the re-introduction of the African slave trade. But he had himself desisted from every pertinent argument against that evil by his attitude on principle towards slavery — an attitude which made him a caged lion so far as the aggressions of the slavocracy were concerned. It was plain that he did not now go with the republicans, that he did not even pretend to do so, and did not promise that he ever would. “I do not ask,” he said, “whether slavery be voted up or voted down.” Such was his confession of faith; that is, his “avowed mission” was to bring the people to look upon it as entirely indifferent whether slavery should gain or lose ground. “Our cause, then,” said Lincoln, “must be intrusted to and conducted by its own undoubted friends — those whose hands are free, whose hearts are in the work — who *do care* for the result. . . . We shall not fail — if we stand firm, *we shall not fail*. Wise counsels may accelerate or mistakes delay it, but the victory is sure to come.”

Was Lincoln or Greeley right? Which of the two needed to be reminded that, in this struggle, everything depended on fidelity to principle? The conflict was irrepressible, because it was a conflict of opposing principles; and the victory of the one principle was to be promoted by its champion voluntarily making room for the man who, with boundless cynicism, proclaimed absolute indifference in the struggle of the two principles to be his supreme political maxim! It was, indeed, quite possible that the republicans might succeed in the next presidential election, only provided the democratic party was split into Douglas and anti-Douglas democrats; but their victory would have been worse than fruitless if they allowed

themselves to be converted to the utilitarian policy now preached by Greeley and his associates; for the consequence of that victory would necessarily be problems which never could be solved by a party which did not hesitate, for supposed reasons of expediency and with full consciousness, to play fast and loose with the principle on which their whole existence depended. If the republican party forgot that its opposition to the slavocracy was a struggle for a moral principle, it might well be considered dead; and it would have been guilty of such forgetfulness if it now favored Douglas. The urgent advocacy of Douglas's candidacy by the republican zealots of the east was the most dangerous crisis which the republican party had to meet up to the outbreak of the civil war.

Many friends of the project had, as Wilson relates, been very much startled by the holding of the democratic state convention of Illinois; and the course of the campaign soon opened the eyes of nearly all so wide that they no longer regretted its failure. If they had been able immediately to rid themselves of the narrow-mindedness which dictated their original attitude towards the question, the holding of that convention and the course of the campaign would have convinced them that that project had led them to the verge of an abyss.

The campaign was, at first, conducted in the usual way; that is, the two opposing candidates spoke before party meetings. Afterwards (July 24), Douglas was challenged by Lincoln to hold common meetings at different places, in order that the views of the two parties might be developed and defended by their candidates immediately after each other and before the same audience. Douglas accepted the challenge, but stipulated for an advantage: he was to open and close the debates.

The first of the seven common meetings took place on the 21st of August, in Ottawa, and the last on the 15th of October.

The position Douglas occupied in national politics invested everything relating to the senatorial election in Illinois with so much importance that it was followed by the whole people with strained attention. But, before long, the oratorical tournament itself excited so much interest that the prize directly striven for seemed almost a matter of secondary importance. Douglas had so much at stake that he would certainly have done his best, if he were concerned only with making a perfectly sure victory as brilliant as possible. But it soon became evident that he had to employ all his strength and make use of all his art. Lincoln proved himself a foeman worthy of the steel of even the strongest and most skilful. The republicans were almost as much surprised as the democrats to discover that his mental powers were so well proportioned to the size and strength of his bodily members. If the magnates of the east had not believed that not much more than a vote would be gained by his election to the senate, they would probably have given a somewhat different and more correct decision to the question of Douglas's re-election. If the presumptive candidate had been called William H. Seward instead of Abraham Lincoln, they would never have asked that he should voluntarily retire in favor of Douglas. Notwithstanding the one hundred and ten votes which had been united on Lincoln as a candidate for the vice-presidency in the Philadelphia convention, he had, in their eyes, scarcely grown beyond the dimensions of a local magnate; and only the partiality of those immediately about him could see in him the ability that would enable him to play a really important part on the theatre of na-

tional politics. And now Douglas, the most dreaded parliamentary champion of the democratic party, found this intellectual combat with Lincoln harder work than any of his innumerable verbal fights in the senate with the most distinguished and most eloquent politicians, republican and democratic. His sharpest thrusts and most perfidious feints were coolly and safely warded off and answered with powerful blows that beat through his best parries. He took refuge in downright untruths — nay, did not disdain spiteful comments on the pastimes in which the young backwoodsman had once taken delight, nor coarse witticisms aimed at his ungainly appearance, in order to get an advantage over him; but, after every tilt, Lincoln loomed up higher and firmer, while additional fragments of Douglas's armor strewed the ground.

Douglas endeavored to stamp Lincoln as an abolitionist. This bit of tactics was not bad. As against the radical and the revolutionist, not only could fidelity to the laws, which was and must remain the fundamental principle of American nationality, be appealed to, but a great many prejudices, so deep rooted that the very best of arguments were powerless against them, could be excited against him. Still Lincoln did not fall into the snares which his crafty opponent had laid for him: he trampled on them. The charges Douglas made against him, from out the past, were such as, as Lincoln irrefutably proved, might at most be laid on the shoulders of others, but not on his; and as to the present and future, he answered him in a manner that made the insinuation of radical tendencies absolutely ridiculous. The convictions and views to which he confessed were not only moderate, but so conservative that one might feel oneself tempted to ask Fate: If that be the standard-bearer of

the party of progress, can the child be yet born who will see the day when the clanking of the chains of slaves will no longer be heard in the land of liberty? In respect to the abolition of slavery in the District of Columbia, he still occupied precisely the same position he had assumed in his bill upon that question. The obligation to give the south an efficient fugitive-slave law he recognized absolutely. Concerning the power of congress to prohibit the slave trade between the states, he declared that he had as yet formed no fixed opinion, but stated that, even if such a power existed, he would advocate its exercise only in case it was done, as in the abolition of slavery in the District of Columbia, "upon some conservative principle." The "right and duty" of congress to prohibit slavery in all the territories he advocated without reservation, but was of opinion that, if a territory in which it was prohibited gave itself a slavery constitution, it must be admitted as a state, much as the increase of slave states was to be lamented.<sup>1</sup> And lastly, he emphatically expressed the conviction that political and social equality could never be granted the negroes.<sup>2</sup>

Lincoln himself said that these answers would please his really abolitionist friends least of all. But whomsoever they might please or displease, they were certainly not ambiguous, and hence every voter could find in them

<sup>1</sup> Debates, pp. 88, 89.

<sup>2</sup> "I will say, then, . . . that I am not nor ever have been in favor of making voters or jurors of negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say, in addition to this, that there is a physical difference between the white and black races, which I believe will forever forbid the two races living together on terms of social and political equality. . . . I give him (Douglas) the most solemn pledge that I will, to the very last, stand by the law of this state, which forbids the marrying of white people with negroes." *Ibid.*, p. 136.

a clear answer to the question, whether and to what extent he would find in him a representative of his own views. But for whom was this possible in Douglas's case? When, in a speech, he charged Buchanan with inconsistency, Lincoln asked him: "Has Douglas *the exclusive right*, in this country, of being *on all sides of all questions?*"<sup>1</sup> The sneer was a cutting one, but it was deserved. Lincoln's hardest task was not to prove that Douglas's views were pernicious and wrong, but to wring from him unambiguous declarations as to what his opinions really were. When Lincoln asked him whether he would submit to a decision of the supreme court of the United States which denied a state the right to abolish slavery within its limits, he answered that Lincoln's intention was to cast suspicion on the supreme court by representing it as possible that it would violate the constitution. Such a decision was impossible; it would be an act of moral high treason, of which no judge would ever be guilty.<sup>2</sup> But were not the republicans convinced that the Dred Scott decision was a gross violation of the constitution, and did not Douglas severely reproach them because, notwithstanding this their conviction, they did not unconditionally submit to it, but were endeavoring by all legal means to overthrow the principles proclaimed in it? Hence, Lincoln's question would have been perfectly warranted, even if it had not been already so often proved that what Douglas curtly declared to be an absolute impossibility followed directly from the Dred Scott decision.<sup>3</sup> His answer was, therefore, no answer; and no one was more fully aware of this fact than him-

<sup>1</sup> Debates, p. 223.

<sup>2</sup> Ibid., p. 96.

<sup>3</sup> In a later speech he adduced proof of this in a few clear and concise sentences of irrefutable logic. See Ibid., p. 184.

self. He would not answer, because he could say neither yes nor no. If he said yes, he would not receive a single vote in all Illinois; if he said no, he would blunt the edge of his best weapon against the republicans by putting himself in contradiction with himself.

As Douglas's extraordinary, dialectical skill was supported by complete unscrupulousness, he might really be compared to the shorn and oiled Reynard; but in Lincoln he had found an Isengrin with teeth able to hold him so fast that all his arts were of no avail. But at last, on the most important question, he was compelled to say so much that he said too much.

Douglas, said Lincoln, can no more be torn away from the Dred Scott decision than a stubborn beast from the stick in which it has locked its teeth. And yet, what did the Dred Scott decision make of his squatter sovereignty? Its existence was decreed away.

This was, indeed, as clear as the noonday sun; but Douglas dared not admit it, for the person in the free states who had allowed himself to be won over to the Kansas-Nebraska bill found his justification before his own political and moral conscience in the fact that the original democratic principle of popular sovereignty was substituted for the Missouri restriction. As early as the 12th of June, 1857, in a speech at Springfield, he claimed that the Dred Scott decision was a confirmation of his doctrine.<sup>1</sup> He did not now, at first, repeat this absurd claim. He did not even flatly deny that the decision and the doctrine contradicted each other, but was satisfied with pointing out that the incompetency of the territorial

<sup>1</sup> "Hence the great principle of popular sovereignty and self-government is sustained and firmly established by the authority of this decision." Nicolay and Hay, *Abr. Lincoln*. *The Century Magazine*, June, 1887, p. 218.

legislature in relation to slavery was first deduced only from the incompetency of congress established by the decision, and then added: Whether the court will extend its decision that far is of interest theoretically, but practically of no importance; as a matter of fact, the will of the people alone is still controlling, for slavery cannot exist a day where it has not the people and the laws on its side.<sup>1</sup> This was again the substitution of a bold assertion for the answer asked to the question put. The question was not what would actually happen, but what was the law.

Lincoln now formulated his question in such a way that every loop-hole of escape in Reynard's constitutional dwelling-place seemed stopped. "Can the people of a United States Territory, in any lawful way, against the wish of any citizen of the United States, exclude slavery from its limits prior to the formation of a State Constitution?"

To refuse an answer was to admit defeat. But must not every answer given come in conflict either with the Dred Scott decision or with the doctrine of popular sovereignty, since they stood in opposition to one another like yea and nay?

The answer which Douglas gave, on the 28th of August in Freeport, was an unsurpassable masterpiece of sophistry. "It matters not what way the supreme court may hereafter decide as to the abstract question whether slavery may or may not go into a territory under the constitution, the people have the lawful means to introduce it or exclude it, as they please, for the reason that slavery cannot exist a day or an hour anywhere unless it is supported by local police regulations. Those police regulations can only be established by the local legisla-

<sup>1</sup> Debates, p. 49.

ture, and if the people are opposed to slavery they will elect representatives to that body who will, by unfriendly legislation, effectually prevent the introduction of it into their midst. If, on the contrary, they are for it, their legislation will favor its extension. Hence, no matter what the decision of the supreme court may be on that abstract question, still the right of the people to make a slave territory or a free territory is perfect and complete under the Nebraska bill. I hope Mr. Lincoln deems my answer satisfactory on that point."

In one respect, indeed — and in the most essential one — these statements were entirely "satisfactory" to Lincoln, as Douglas soon learned to his cost; but they were not an answer. They seemed to be an answer only because of the artful smuggling in of the words "lawful means" and "right" in a more ample exposition of the assertion he had made previously concerning the development which affairs would and must practically take. Lincoln had not asked what the "right" of the people of the territory "under the Nebraska bill" was, nor whether they could exclude slavery by means in themselves "lawful," but whether they could do it "in any lawful way" — that is, whether, according to the authoritative interpretation of the constitution given in the Dred Scott decision, they had the legal right to do it.

But although Douglas's statements were no answer, one could be inferred from them; and the inferences to be drawn from them were the grave of Douglas's presidential hopes.

Lincoln refuted the assertion that slavery could not exist an hour among a population averse to it, without police regulations, by simply calling attention to the facts that slavery had been introduced into the thirteen colonies, and had taken root there without such police regu-

lations, although the majority of the population did not even desire it, and that Dred Scott<sup>1</sup> had been kept in slavery, spite of a law which was held to be valid. Our experience, he said, has shown that it needs not only a law, but the enforcement of that law, to exclude slavery. In the newly-invented "do-nothing sovereignty," by means of which the territories wished to protect themselves from slavery, the original popular sovereignty seemed as diluted as the homeopathic soup made from the shadow of a chicken that had died of starvation. But even in this form popular sovereignty was irreconcilable with the Dred Scott decision; for the latter covered the whole ground, and two things cannot occupy the same space at the same time. Douglas had, on the 9th of June, 1856, in the senate, in answer to questions put to him by Trumbull, declared, in the most various forms, that it was for the federal supreme court to decide whether the population of a territory might exclude slavery before the adoption of a state constitution. Now he gave the claim that the territorial legislature *could* do it in the face of the decision of the United States supreme court such a form, that it seemed the self-evident consequence thereof was, that it *might* properly do it. But the members of the legislature were obliged to take an oath to support the constitution of the United States. Do they keep that oath if, by their legislation, they make it impossible to hold as property what, according to the constitution of the United States, is lawful property? Does that oath not impose an obligation to pass such laws as are required to make the enjoyment of the rights granted by the constitution possible? Is it not an evident violation of that

<sup>1</sup> And many thousands of others. In all the older northwestern territories and states slavery had actually existed, notwithstanding the ordinance of 1787.

oath to pass laws the object of which is to prevent the enjoyment of those rights? Will not, and must not, the courts declare such laws to be unconstitutional, and therefore null and void? Is not congress bound to protect and support, by its legislation, every right grounded on the constitution? Is that not the only reason that compels the opponents on principle of slavery to recognize the provisions of the fugitive-slave law as binding, and makes obedience to them a duty?

To ask these questions was to answer them. Notwithstanding this, Douglas, perhaps, did not need to pay any special attention to them, so long as they came only from republican mouths, and so long as he thought only of his seat in the senate, to the keeping of which the only thing necessary was that those who had hitherto been his friends in Illinois should remain faithful to him. But was not the south sufficiently interested in the answering of them? And how would he recommend himself to the slavocracy as a presidential candidate by asserting that they received, in the decisions of the supreme court concerning the powers of the territorial legislatures relating to slavery only thankworthy material for scientific essays and forensic debating exercises, because the territorial legislatures were unquestionably free to put them in the libraries unread, or to throw the paper on which they were written into the waste-basket, and by their actions cheat the slaveholders out of their recognized constitutional rights? That Douglas did not recognize what importance the proclamation of this doctrine must have in determining the attitude of the slave states towards his candidacy, is simply inconceivable; and that he nevertheless proclaimed it is, therefore, in view of his character, explicable only on the assumption that he considered not only his re-election to the senate, but, more than all,

the election of the number of democratic presidential electors in the five states necessary to insure the victory of the democratic party, impossible without its proclamation.

This it was that gave the electoral campaign of the year 1858, in Illinois, its immense importance, and hence Lincoln and the republicans came out of it the real victors, although the democrats, owing to an inequitable division of the electoral districts,<sup>1</sup> obtained so many seats in the legislature that they were able to send Douglas to Washington again. The struggle reached its highest point of intensity in Douglas's speech at Freeport and Lincoln's answer at Jonesborough; the decision of the main question was made there, and the opposite decision by the election on the comparatively secondary question did not alter this in any respect. There Lincoln had given irrefutable proof that the republican party, by adopting the project of Greeley and his associates, would have sold their world-historic mission for less than a mess of pottage; for that mission was at an end the moment that party no longer based its right of existence on the struggle for a moral principle. But how could it maintain the claim that it was doing this, after it had placed itself, in such a manner, in the service of the man who was now convicted out of his own mouth of holding it to be allowable to degrade constitutional law, so far as it related to the slavery question to a mocking phantasmagory, after he had long since announced with cynical frankness that, as a statesman true to the constitution, he had nothing to do with a moral principle in the political treatment of that question? There, too, Douglas was forced to express himself on the rent that ran through the democratic party in such a way that even its apparent closing

<sup>1</sup> See the details, *Debates*, p. 54.

could never be effected. But this was the most evident proof of the irrepressibleness of the conflict produced thus far by the history of the slavery question. Douglas's complaisance towards the slavocracy had found no limit either in expediency or equity or honor or law or morality, but only in political possibility; and yet it was not fortuitous circumstances that led to the slavocracy's bringing on the catastrophe by his political immolation: it was an inevitable consequence of this his position, under the circumstances existing, that he compelled the slavocracy to do it.

The slavocracy did not wait for the presidential campaign to announce that, notwithstanding all he had done for them, they looked upon him only as an enemy, whose political annihilation they would endeavor to accomplish by all means in their power. There had been no lack of bitter words uttered against him during the last session of congress. Now the favorable opportunity was immediately used to follow them up by corresponding acts. The influence of the administration was employed openly and emphatically against his re-election; and the cause was unquestionably not mainly Buchanan's personal animosity, but the imperative demand of the slavocracy. John Slidell was, according to his own admission, very active, as one of their principal agents, against Douglas, and made extensive use of the convincing power of ringing arguments.<sup>1</sup> In the house of representatives, Morris, of Illinois, afterwards read some sentences from the letter of a member of the cabinet to an official, in which it was said to be the duty of the well-intentioned to take a decided stand against all democratic politicians who were affected with the Douglas heresies and did not repent

<sup>1</sup> H. S. Foote, *Casket of Reminiscences*, p. 135.

and do penance; for they did much more harm than the republicans.<sup>1</sup> On the 4th of November, two days after the election, the *Chicago Herald*, the principal organ of the national (*i. e.*, administration) democrats, admitted that these manœuvres had not remained without result. Immediately before the election, it was said, it had been learned that, notwithstanding previous contrary assurances, "the entire Catholic vote" of the city would be cast for Douglas. Embittered at this, the national democrats had voted *en masse* for the republican candidate, "as the most effectual way of defeating Douglas."

That, spite of these attacks from the rear, Douglas remained the winner, only made the prospects of a democratic victory in the presidential election worse. It had now been shown that the views represented by Douglas were in harmony with those of an overwhelming majority of the democrats in the free states. That these states would agree to the demand of the south and sacrifice their convictions together with their leader, in order that the two wings of the party might beat in unison once more, was, at least, not very probable. But, on the other hand, it became more certain every day that the south would make the demand and insist upon it, without regard to any consequence, however possible or certain. The radicals there had long since drawn the same inferences as Lincoln from the Dred Scott decision. Douglas, referring to the non-intervention principle of the democratic party, had emphatically declared the demand for federal laws for the protection of slavery in the territories an absurdity.<sup>2</sup> But it had scarcely become known that Kansas had rejected the proposition of English's bill when this

<sup>1</sup> Congr. Globe, 2d Sess. 35th Congr., App., p. 174.

<sup>2</sup> Debates, p. 134.

demand, too, was made with great definiteness by the Richmond *Enquirer* and the Charleston *News*.<sup>1</sup> And the southern radicals and Lincoln met not only in this concrete question, but their judgments on the nature of the evil were also entirely alike; and for this reason they could have no more in common than he with Douglas, although he had made his infallible remedy of popular sovereignty still more infallible by causing it to evaporate with the Dred Scott decision into "do-nothing sovereignty." They had, like Lincoln, long before Seward, recognized and proclaimed the irrepressibleness of the conflict. As early as 1856, the Richmond *Enquirer* had gone a great way beyond Lincoln in the drawing of correct conclusions. The assertion that the struggle would have to continue until one of the opposite principles had fully conquered the other and ruled alone, it followed up by saying that the disruption of the Union could not put an end to the struggle, but would only aggravate it.<sup>2</sup>

Men might dispute about the correctness of this latter assertion until the decision of facts ended the controversy. Proof that the former was indisputable accumu-

<sup>1</sup> The first-mentioned wrote: "It is not sufficient that the decision of the supreme court prevents congress and all its delegates from the prohibition of slavery in a territory. There must be positive legislative enactment; a civil and a criminal code for the protection of slave property in the territories ought to be provided." The *Independent*, Sept. 30, 1853.

<sup>2</sup> "Social forms so widely differing as those of domestic slavery and (attempted) universal liberty cannot long co-exist in the great republic of Christendom. They cannot be equally adapted to the wants and interests of society. The one form or the other must be very wrong, very ill suited to promote the quiet, the peace, the happiness, the morality, the religion, and general well-being of communities. Disunion will not allay excitement and investigation, much less beget lasting peace. The war between the two systems rages everywhere, and will continue to rage till the one conquers and the other is ex-

lated every day, in the development of ideas and of actual circumstances — in every department of life — in the slave states.

The old bonds were fast wearing away, and spite of every effort there was no replacing them by new ones. It was now universally recognized that it was very desirable, if not necessary, to establish a closer connection with the Pacific coast by the building of a railway. But people seemed as far as ever from the realization of the idea, not because of technic or financial difficulties, but because they could not agree on the route to be chosen. The question was discussed in congress till all were sick of it, and every speaker was able to adduce the most various grounds in favor of the line advocated by him. But an agreement as to some route would finally have been reached were it not that the road would have to be built either through slave soil or free soil. That was the one insurmountable difficulty; for the idea which had, indeed, been also expressed, of building two roads at the same time, could not stand the most superficial criticism. Not a cent nor an acre of land was to be got from the south for a road that ran through free territory, because such a road could insure it no direct advantage, and would, moreover, accelerate the already alarming growth of the natural preponderance of the free states. But just as little could the north agree to have the road built through slave territory, since, looked at from an economic point of view, its construction through slave territory would have been folly, and would besides — at

terminated. If, with disunion, we could have 'the all and end all there,' the inducement would be strong to attempt it. But such a measure would but inspire our European and American adversaries with additional zeal." The *Richmond Enquirer*, May 6, 1856. The article was addressed to South Carolina.

least after a short time — have directly promoted the actual taking possession of new tracts of land by slavery. To justify the immense sacrifice demanded by the gigantic work only military reasons could be advanced, and these reasons helped the south to overcome the constitutional objections in the way; but, even from a military point of view, a southern line had no advantage whatever.

In respect to the public lands, likewise, a marked conflict of interests had gradually been developed. So long as they had been treated on the one hand only as a source of income for the federal government, and, on the other, had been ceded to the states and territories for certain public purposes, the land policy of the Union had remained uninfluenced by the slavery question. But this ceased to be the case when the idea began to be entertained that the financial as well as all the other interests of the Union would be most effectually promoted if the direct advantage to be reaped from the sale of the *ager publicus* was looked upon as a matter of secondary moment, and the prime consideration were to accelerate its settlement as much as possible. This fundamental idea of the later homestead law was brought before congress as early as 1846. At first, however, it met with little favor. The number of those was not small who thought a scornful witticism the only answer appropriate to the absurd proposal — like the host in the biblical parable, to invite everybody out of the highways and by-ways to select for himself from the domain of Uncle Sam a respectable piece of land to his own liking, as a free gift. But during the next succeeding years, steps were taken, in certain definite cases, to realize the idea. A beginning was made with Oregon by a law of September 27, 1850,<sup>1</sup> and the experience there had did not deter congress

<sup>1</sup> Stat. at L., IX, p. 497.

from the further pursuit of this policy; for, in a law of July 22, 1854, relating to the territories of New Mexico, Kansas and Nebraska, it was re-adopted, at least for the first named.<sup>1</sup> In the house of representatives a majority had been gained for a general homestead law even in 1852, and the bill had warm friends in both parties. The senate, however, was of more conservative mind. At first it agreed only to a species of payment on account in the so-called Graduation Act of August 4, 1854,<sup>2</sup> in which the price of the public lands was fixed in accordance with the number of years which they had been already in the market, and with a sliding scale, down to twelve and one-half cents per acre. Grow, of Pennsylvania, however, introduced a new homestead law at every session. His opponents, indeed, subsequently stated that he did this only that he might be gratefully remembered by his constituents; that public opinion looked upon the homestead idea as disposed of, because enough had been done by the Graduating Act. This was not so. The idea steadily gained ground, but at the same time gradually assumed the character of a party question. The republicans' advocacy of it became more and more emphatic and more and more united. There were many democrats who did not allow themselves to be determined on that account to oppose what they had hitherto defended. But the attitude of the slavocracy became more and more decidedly hostile. The lesson of the vain struggle for Kansas showed that they lacked the human material — slaves as well as freemen — successfully to stand the struggle of competition with the north in the making of settlements. A homestead law would necessarily accelerate the growth of the preponderance of the free states

<sup>1</sup> Stat. at L., X, p. 308.

<sup>2</sup> Ibid., X, p. 574.

much more than a railway running north of Mason and Dixon's line to the Pacific ocean.

Another experience of recent years taught the same lesson much more impressively, because it placed before the eyes of the slavocracy, in a much more glaring light, the fact that the lack of human material left their position weaker every year. We know that their leaders confessed that the conquest of Kansas could not be made, because conquests for slavery could not be effected with partisans of slavery only, and because such conquests required slaves first and foremost; and because it had not been possible to procure them. At the same time, another deeply significant illustration of this great truth was given. It appeared that the slavocracy did not have enough slaves to assert all that was in their undisputed legal possession.

A census had been taken in Missouri in 1856. Its results relating to the movement of population accorded with the high-flown speeches on the universal superiority of slavery over free labor as the basis of social order like the tolling of a funeral bell with the over-merry songs of a tipling party. When, in February, 1857, a strong resolution was moved in the state legislature against all efforts towards emancipation, Gratz Brown said, in the house of representatives, that the figures of the census contained the proof "that this abolishment of slavery, which you are here seeking to stifle and suppress by paper manifestoes, is already in force, and is fast gathering a strength and momentum that must soon crush out all opposition."<sup>1</sup> The total slave population had, indeed, increased twelve thousand four hundred and ninety-two since 1851; but of that number ten thousand two hundred

<sup>1</sup> "The census is the act of gradual emancipation in Missouri." Speech of January 12, 1857. The New York *Tribune*, March 11, 1857.

and thirty fell to the share of twelve counties, and only two thousand two hundred and sixty-two to the remaining ninety-five. In twenty-five counties their number had decreased from twenty-one thousand six hundred and twenty-six to seventeen thousand and eighty-four. During the same period the white population had increased two hundred and five thousand seven hundred and three. The ratio of increase, therefore, of the two classes of population was as one to sixteen. Moreover, the increase of the white population was least where slavery was most strongly intrenched,<sup>1</sup> and *vice versa*. This, indeed, undoubtedly showed that, as Brown said, the population immigrating from Europe and the other states did not consider slavery a blessing. And that this expulsion of slavery by free labor, within a comparatively short time, would find expression in legislation was indisputable, as the number of newspapers which advocated the gradual abolition of slavery steadily increased.<sup>2</sup>

De Bow's *Commercial Review* drew from these facts the inference that the border states<sup>3</sup> could be preserved

<sup>1</sup> In the twelve counties mentioned, "lying chiefly in the central belt of territory that borders the Missouri river," only twenty-one thousand two hundred and four. In the ten counties bordering on Iowa, on the other hand, the white population increased from twenty-five thousand five hundred and sixty-four to fifty-seven thousand two hundred and fifty-five, and that of the slaves from six hundred and thirty-three to eight hundred and seventy-one.

<sup>2</sup> In general, as Brown correctly said, not "as a mere act of humanity to the slave," but "out of regard for the white man," "as a labor question." On the attitude of the press, see the *Independent*, June 3, 1858.

<sup>3</sup> It was rumored that John M. Clayton entertained the thought, before his death, of laboring for the abolition of slavery in Delaware. The Milford (Del.) *News and Advertiser* wrote in reference thereto: "We look at the likeness of Clayton now hanging over our table, and can see an additional ray of honor crowning his brow." The *Independent*, January 6, 1859.

for slavery only on condition that the slave states left the Union and formed a new confederation.<sup>1</sup> True, in this connection, the Kansas troubles were mentioned in a way from which it might be concluded that that very influential periodical believed itself warranted in tracing the danger to slavery in the border states solely to their direct contact with the free states. Whether the slavocracy could have derived any consolation from this did not need discussion, since the same complaints came from Texas as from Missouri; and, in the case of Texas, such an explanation of the threatening phenomena was out of the question. The slavocracy had looked upon the provision, repeatedly suggested, that Texas might be divided into several states, as a great achievement in their interest; and now the New Orleans *Crescent* declared that the opponents of slavery<sup>2</sup> would, in five years, have such a preponderance in western Texas that they would be able to dictate the law to the whole state, or to constitute themselves a state.<sup>3</sup>

As the material preponderance of the north became ever greater and more apparent, and began to make itself felt more strongly and directly, the thinking minds of the south naturally turned their attention more and more to the cause of the difference in the rapidity of that development. In Calhoun's day it was sought for in the economic policy of the federal government; and those who looked for it there were certainly the victims, to a

<sup>1</sup> XXIII, pp. 521, 522. "Under the present Union, the border states must all in a short time be lost to us. Were that Union at an end the south would at once become a unit, and continue such for perhaps a century. The terms of a new confederation would secure this."

<sup>2</sup> The slavocratic press often pointed out that here, as well as in Missouri, the Germans stood in the foremost ranks of them.

<sup>3</sup> See the *Independent* of October 22, 1857.

greater or lesser degree, of honest self-delusion. Nor had this self-delusion entirely ceased even now. Wherever the sins of the federal government were told, this chapter was not forgotten, and most extensive use was made in it of *italics*. But the complaints which, in this respect, were still deemed well grounded were no longer accompanied by the claim that those sins needed only to be avoided in order that the two halves of the Union might henceforth advance with equal strides in the path of progress. Men no longer concealed from themselves or from others that the ultimate cause of the difference lay in the opposition between slavery and universal freedom. But, on the other hand, they were much further than in the days of Calhoun from inferring from this that, in the second half of the nineteenth century, slavery was a terrible chain about the members of a civilized people. The permanent existence of slavery had become the starting-point and object-point of thought. Facts could, therefore, no longer be allowed to speak, but had to be talked down more systematically than ever, and with increasing violence. Because people in the south far more than in the north were conscious how actual circumstances conformed themselves more and more to the logical postulate that contraries must mutually exclude each other, they declared, in an increasingly confident tone, according as their own weakness became more evident, the society based on freedom to be irrevocably doomed to decay. As, in the entire aggressive policy of the south, weakness had always been the sharpest spur to action, so now weakness made systematic self-deception, carried to the extent of pure madness, an inevitable necessity. On the other hand, the intentional self-deception springing from this root was now, as the south's aggressive policy had been from the beginning, the best proof that the slavoc-

racy were really not deficient either in the power of feeling the import of hard facts or of understanding them. We here meet not with anything new, but only with the old intensified and bearing a more distinct stamp. It is the old method in the madness of the glorification of their peculiar institution and in the condemnation and aspersion of free society; and the method leads to the adoption and execution of a consistent, practical, brutal, realistic policy, destitute of every feeling of consideration or regard — one whose cold calculations were made with the most remarkable certainty.

The idea is still widely prevalent on both sides of the Atlantic that the spokesmen of the slavocracy, in the press and on the stage, knew very well how monstrous an absurdity it was to laud slavery as an inestimable source of blessings, and to declare universal freedom the quagmire in which all that was bad and worthless grew luxuriantly, and all that was good became stunted or died. But if this were true, we would have to assume that they wished consciously and deliberately to lead the slave states to ruin; for, absurd as were their words, their actions were in complete harmony with them. Although they continued to hanker after a trade of their own, the development of the power of capital, and to some extent of independent industries, and to take counsel among themselves how these wishes were to be fulfilled; still the recognition of the increasing ascendancy of the north over the south did not strengthen the endeavor to make as much room as possible for the vigorous action, side by side with slavery, of the life-awakening spirit found where freedom prevails and servitude is denied a foothold. On the contrary, their study was directed, more energetically and more consciously than ever, towards giving the thought, will and feeling of the people a more and

more exclusively slavocratic basis, towards consolidating the views and (alleged) interests of all classes of the people more and more strictly on this basis, and thus separating the slave states more and more from the community of the occidental civilized world as a whole complete in itself.

It was not only the newspaper writers and other professional politicians with a more radical tendency who were intensely active in the advocacy of this policy. They, of course, made the most noise, and spoke most frequently in a wild, agitative tone. Part of the most effective work, however, was done where politics should have been excluded on principle, and where moral considerations would have demanded at least the greatest discretion. Prominent southerners had already declared unreservedly that the whole struggle, in the end, amounted to the question, whether slavery was morally wrong. It was highly significant, therefore, that this question was now more and more loudly and more and more absolutely answered in the negative by the different churches. This had, in 1857, led to a further rupture among the Presbyterians of the New School. When the General Assembly that met in Cleveland very mildly expressed its disapproval of the course of certain Presbyterians of the south in calling slavery "an ordinance of God," the southern members protested against it;<sup>1</sup> and, when their protest was rejected, they resolved to call a convention at Washington, in order to organize a new General Assembly, with the guaranty that it would not concern itself with the slavery question.<sup>2</sup> The Methodist Church

<sup>1</sup> The protest says: "We protest that such action is, under present conditions, the virtual excising of the south, whatever be the motives of those who do the deed."

<sup>2</sup> See the acts in the *Independent* of June, 11, 1857.

South took a still more significant step in 1858. Their "general rules" forbade "the buying and selling of men, women and children with an intention to enslave them." This provision was now repealed, for the reason that its wording was ambiguous, and might be considered "antagonistic" to the institution of slavery, with which the church had nothing to do.<sup>1</sup> At the same time great stress was laid on this, that "a strong desire for the expunction of said rule has been expressed in nearly all parts of our ecclesiastical connection."

These demonstrations of the churches did more to shake the Union than the most intemperate speeches of the politicians. Not until people, on both sides, who wished to live simply and rightly in peace with God and their fellow-men, engaged in the struggle with the utmost firmness, did the day of the decision dawn. And to these people came, in the resolutions of church meetings, the voice of admonition, with terrible impressiveness, saying: He that is not for me is against me, and he that is not against me is for me. We have already seen that, decades before, the charge was rightly lodged against the churches, that they were the strongest bulwark of slavery. But, in the north, one after another of them had ceased to be such, more or less; and in the south, even when they did not say so directly, their teachings were understood to mean that it was the duty of a good citizen and true Christian not only not to oppose slavery one's self, but to protect it now and in the future against every attack, no matter from what quarter it came or in what form it was made. In neither section did these people want to lay hands on the work of the fathers

<sup>1</sup> "Except in enforcing the duties of masters and servants, as set forth in the Holy Scriptures." It was added that this should not be looked upon as an expression of opinion on the African slave trade.

of the republic. In the south itself the great majority of them would have made personal sacrifices in order that they might be able to transmit that work stronger, grander and mightier than ever to their children and their children's children. What would have furnished the strongest props to the tottering structure, if the conflict had not been an irrepressible one, now served, on the opposing sides, as the most powerful lever of destruction under its foundation. It fell, and could not but fall, because, out of the clash of diametrically opposed interests, views of ethico-religious duty arose among the core of the people.

To make use directly of agitation, as some of the clergy had done for years, the churches as such still considered to be improper. That the evil effects of the position they had taken — a position which may be most properly described as the rejection and condemnation on principle of all criticism — reached these proportions so soon, might, therefore, be a matter of surprise, were it not that the schools became more and more preparatory institutions to the churches.

Up to this time even the most ultra radicals had asked nothing more than that the school-books imported from the north should contain no word condemnatory of slavery. Now, there were a great many who did not deem this sufficient. More and more frequently and more and more emphatically was the demand made that southerners should prepare their own school-books, because nothing could be had from the north that the south needed. An author and a publisher had, indeed, been found here and there who endeavored to meet this demand. The paper and typography bore sorry witness to the industrial development of the south; but the good intentions of the publisher made up for the mechanical defects of the books.

The most ardent patriots did not rest satisfied to care for the development of a "sound" slavocratic spirit in the rising generation; they clothed venomous calumnies of the north and of society in which slavery did not exist in the garb of grammatical and arithmetical examples.<sup>1</sup> The gospel of hatred began to be preached to the youth. We need scarcely say that these wild excesses did not yet meet with general approval. But the admonition that it was a political necessity to saturate the entire school system with the unadulterated slavocratic spirit found an attentive and willing ear among an ever-widening circle of people. A gentleman in Georgia published in 1857 a series of articles in De Bow's *Commercial Review*, intended to show that the establishment of a "Central Southern University" was necessary, and why it was necessary.<sup>2</sup> A peaceable settlement of the difficulty with the north was, he said, impossible; and, in order to insure victory to the south in the approaching conflict, there should be only one way of thinking in the south on the question at issue.<sup>3</sup>

<sup>1</sup> For further data on this point, see L. Stanton, *The Church and Slavery*, pp. 195, 196.

<sup>2</sup> "Towards which should radiate, to be afterwards condensed, intensified and reflected, the emanations of our municipal and state schools, academies and colleges."

<sup>3</sup> "That there does exist a political necessity for the establishment of an institution of learning of the character alluded to — an institution around which shall cluster the hopes and the pride of the south, the teachings of which shall be thoroughly southern; one pledged to the defense and perpetuation of that form of civilization peculiar to the slaveholding states — will not, perhaps, be questioned, although some may entertain doubts as to the pressure of that necessity. . . . The difficulty between the south and the north can never arrive at a peaceable settlement. . . . The first step, then, which the south should take in preparing for the great contest ahead of her is to secure harmony at home. . . . The University of Virginia is not sufficiently southern, sufficiently central, sufficiently cottonized, to

The *Southern Literary Messenger* advocated, so far as the last point is concerned, the same view; and in doing so told, with frightful plainness, what it understood by an unadulterated slavocratic spirit. "An abolitionist is any man who does not love slavery for its own sake as a divine institution; who does not worship it as the corner-stone of civil liberty; who does not adore it as the only possible social condition on which a permanent republican government can be erected; and who does not, in his inmost soul, desire to see it extended and perpetuated over the whole earth as a means of human reformation, second in dignity, importance and sacredness alone to the Christian religion. He who does not love African slavery with this love is an abolitionist."

If this was so, the south swarmed with abolitionists. But even if the majority of the people had not yet sunk to this inconceivable depth, where were the men to be found who still had the intellectual, moral and even physical courage to come manfully before the people and say to them: Harken not to the false, ranting preachers; their blessings are a mockery and a curse! The entire population had become too much the slaves of slavery to be aroused, by such terroristic blasphemies, to a consciousness of the abyss towards which they were staggering. The iron law of self-preservation continued gradually to force the slaveholders to take measures which could be adopted without shuddering only provided people had learned to love slavery with the insane love of those

become the great educational center of the south. . . . The establishment of the university has been proposed as a measure certain to produce, by its working, unity and concord of action on the part of the slaveholding states. The young men of the south will then assemble and drink pure and invigorating draughts from unpolluted fountains. They will meet together as brethren, and be educated in one common political faith, at one common alma mater."

fanatics, and the masses had grown in every respect unable to emancipate themselves from their leadership in proportion as the unfreedom of the slavocracy itself had become greater.

The fire-eaters had so long made the people accustomed to the most monstrous assertions and demands that the agitation for the re-opening of the slave trade attracted little attention in the north so long as it was carried on only by a few newspapers. Their utterances were so far from being taken seriously, even in the slave states, that Hunter of Virginia called the message of Governor Adams of South Carolina (1856), in relation to this question,<sup>1</sup> a clap of thunder from a clear sky.<sup>2</sup> The impression they made in the free states was not, indeed, correctly described by this rhetorical figure; but here, too, people began to look upon the matter with different eyes in consequence of them. Even in the editorial rooms of the republican newspapers in which the articles of the *Charleston Standard*, *Richmond Enquirer*, *Charleston Mercury*, etc., were cut out to be reprinted, scarcely more than a symptomatic importance had hitherto been ascribed to them. But after such an official announcement of a governor — and of the governor of the state which had always manifested the greatest energy and the

<sup>1</sup> The principal parts read: "Irrespective, however, of interest, the act of congress declaring the slave trade piracy is a brand upon us, which I think it important to remove. If the trade be piracy the slave must be plunder, and no ingenuity can avoid the logical necessity of such conclusion. . . . I feel that I would be wanting in duty if I would not urge you to withdraw your assent to an act which is itself a direct condemnation of your institutions. . . . It is perhaps of the most sacred obligation that we should give it (slavery) the means of expansion, and that we should press it forward to a perpetuity of progress." Cluskey, *Political Text-book*, p. 524.

<sup>2</sup> *De Bow's Commer. Rev.*, XXII, p. 223.

greatest skill in the propagandist agitation in the interests of slavery — it could no longer be doubted that the efforts to move the slavocracy to take this question into their programme would be sufficiently successful to possibly become in time a real danger. How soon it would come to this, however, not even the most pessimistic dreamed.

Henceforth the question occupied a very prominent place in the deliberations of the "commercial conventions" of the south, which were not, indeed, official representative bodies, but which bore a representative character because of the position of their individual members; and the radicals got a great deal nearer to their object every year. In Savannah (December, 1856) W. B. Goulden, of Georgia, made a motion that the members of congress should be requested energetically to bestir themselves to have all the laws which forbade the African slave trade repealed.<sup>1</sup> The motion to bring the resolution up for debate was lost, after a long discussion, by sixty-seven against eighteen votes;<sup>2</sup> but finally a committee was appointed to report at the next session on all the facts relating to the re-opening of this trade.<sup>3</sup> The scornful complaint made by Scott, of Virginia, that Goulden's motion filled the convention with as "pious horror" as if it were a Faneuil Hall meeting,<sup>4</sup> was therefore certainly not warranted. Cochran, of Alabama, stated that his opposition was based exclusively on political grounds; if he were convinced of the expediency of the re-opening of the slave trade, neither the world in arms nor "sickly sentimentality" would keep him from

<sup>1</sup> De Bow's Commer. Rev., XXII, p. 91.

<sup>2</sup> Ibid., p. 91.

<sup>3</sup> Ibid., p. 102.

<sup>4</sup> Ibid., p. 217.

promoting it.<sup>1</sup> The speech of John A. Calhoun, of South Carolina, showed that Cochran did not stand alone. To win their game the radicals only needed to produce the proof of Scott's assertion that there was no other means "to retain certain portions of the south in their allegiance to the great principle upon which our social system reposes;" and in this they must be successful. Goulden himself was, notwithstanding the fruitlessness of his motion, so sure of his case that he declared himself convinced he would see the African slave trade reopened before five years had elapsed.<sup>2</sup>

At a meeting at Knoxville in August, 1857, the radicals won a brilliant victory on an important question. A resolution of Bryan, of South Carolina, demanded the repeal of the well-known eighth article of the Washington treaty of November 10, 1842, in which the United States had bound itself to maintain a squadron on the coast of Africa for the suppression of the slave trade. The motion was adopted by a vote of sixty-six against twenty-six, after a resolution of Sneed, of Tennessee, had been rejected by a vote of fifty-two to forty, which had prefaced the same demand with the declaration that the abolition of the slave trade was "inexpedient and contrary to the settled policy of this country." On motion of Spratt, of Charleston, it was further resolved, by a majority of twelve votes, to appoint another committee to report to the next convention on the question in all its relations.<sup>3</sup>

The report which the majority of the committee laid before the convention in Montgomery in May, 1858, reached the conclusion that, from every point of view, it was "right and expedient" to urge the resumption of the

<sup>1</sup> De Bow's Commer. Rev., XXII, p. 221.

<sup>2</sup> Ibid., p. 222.

<sup>3</sup> De Bow, Commer. Rev., XXIII, pp. 309-310.

importation of slaves.<sup>1</sup> Yancey, in a report of his own, branded the prohibition of the slave trade as a shameful violation of the spirit of the constitution, as an injury to the slave states, and as a fruit of that spirit of injustice which, by legislation, artificially built up the economic greatness of the north and kept the south down. Hence, he demanded the absolute repeal of the prohibition, but wanted it left undecided for the present whether it was advisable for the south to make use of the legal possibility of slave importation.<sup>2</sup> The debate lasted long and was a very excited one.<sup>3</sup> No party was strong enough to have an entirely unambiguous declaration passed; and both sides resolved to lay the matter on the table, and to order the reports printed, as a species of compromise.

In two years, therefore, the radicals had gained so much ground that the more moderate could avert a complete defeat only with difficulty. And even this they were no longer successful in doing everywhere. In a commercial convention held the same year in Vicksburg, the radicals were able by their clamor to drive a number of their opponents out of the hall.<sup>4</sup> De Bow's triumphant statement that in some of the southwestern states "almost

<sup>1</sup> Ibid., XXIV, pp. 473-491. The basis on which the whole argument was raised with the strictest consistency was the proposition: "Affirmance of slavery is, in principle and effect, an affirmance of the foreign slave trade."

<sup>2</sup> Ibid., XXV, p. 121.

<sup>3</sup> Ibid., XXIV, pp. 579-603.

<sup>4</sup> H. S. Foote writes: "A brilliant speech on the resumption of the importation of slaves was listened to with breathless attention, and applauded vociferously. Those of us who rose in opposition were looked upon by the excited assemblage present as traitors to the best interests of the south, and only worthy of expulsion from the body. The excitement at last grew so high that personal violence was menaced, and some dozen of the more conservative members of the convention withdrew from the hall in which it was holding its sittings." *The Bench and Bar of the South and Southwest*, p. 69.

a controlling portion of the population" had been won over to his views on this question<sup>1</sup> might, therefore, not be very far from the truth; and it is certain that the propagating of them made rapid progress, although it was not exactly true that, as the influential publicist said, the attitude of "most of our southern legislatures" proved that "certainly no cause has ever grown with greater rapidity."<sup>2</sup> It would, indeed, have been unnatural if new proselytes had not been daily made, since the agitators were the "young, ambitious and unscrupulous" representatives of "the Young American spirit of the south" — "determined and persevering men;"<sup>3</sup> and every southerner, among the different arguments which these agitators advanced for their demands, found at least one which he could not, although perhaps unwillingly, deny to be possessed of great weight.

A. Morse, of Louisiana, showed in De Bow's *Review*,<sup>4</sup> with an imposing array of figures, that the world's requirement of cotton could no longer be met with the existing amount of labor; the slave-raising border states were no longer able to satisfy the demand of the planter states for field-hands. "Slave prices are even now too high, and must finally become exorbitant" — such was the commentary on these utterances made by an ever-swelling chorus. This argument could not, of course, find favor in the slave-raising states; and the sale of free negroes, which, according to the Richmond *Examiner*, had become more and more a necessary protective measure against the agitation of abolitionists, had afforded

<sup>1</sup> Commer. Rev., XXV, p. 166.

<sup>2</sup> Ibid., XXVI, p. 166.

<sup>3</sup> Letter of April 27, 1859, from Savannah to the *Independent*. The *Independent*, June 2, 1859.

<sup>4</sup> XXIII, pp. 749 ff.

no sufficient compensation for a great and permanent decline of the price of slaves, even if Virginia alone, as the *Examiner* calculated, had earned twenty millions in the business, and spent the money productively in "internal improvements."<sup>1</sup> It was certain from the first that only an evanescent minority would have no objections to make. But, so far as the agitators endeavored to prove the worthlessness of the objection growing out of material interests, political opinions or ethico-religious convictions, their trouble was doomed to be fruitless. Still their success or want of success did not depend on this. The person to whom weightier reasons could be given for a return to the state of things that existed before 1808 became a convert, notwithstanding his scruples. But even in the border states only a small part of the population was interested so directly and to such an extent in not letting the price of slaves fall permanently that it was to be expected all else would have to be subordinated to this consideration. Deloney, of Louisiana, rightly pointed out that it was precisely the small land-owners who were not able to afford the money to buy the slaves necessary for their husbandry;<sup>2</sup> and the majority report, the printing of which the commercial convention in Montgomery had ordered, baited the white plebs with the assertion: "Every slave that comes may be said to bring his master with him, and to add more than twice his political value to the fortunes of the south."<sup>3</sup>

Joined to the alleged material interest was the question of law. Deloney's bold assertion that every state might settle that question to its own sovereign liking must have been very acceptable to every genuine advo-

<sup>1</sup> The Richmond *Examiner*, Jan. 6, 1857.

<sup>2</sup> De Bow, *Commer. Rev.*, XXV, p. 493.

<sup>3</sup> *Ibid.*, XXIV, p. 482.

cate of states' rights, for it was the logical consequence of his other claim that "the federal government has no right to interfere with slavery for any other purpose than to protect the rights of the owners in such slave property;"<sup>1</sup> and this proposition was, for years past, the basis of all the constitutional deductions of the slavocracy.

But the general, political consideration still remained the most effectual. The number of those steadily increased whom facts convinced of the irrefutableness of this proposition: the ruling position of the south is lost beyond recovery, unless we are able, in the competition with the north in the settlement of the land, to procure more slaves than the natural increase of the slave population would provide. But if this one condition were fulfilled, not only could the possibility of a successful resistance to any further outflanking of the south by the north be insured as certain, but an unending era of growing triumphs was prophesied with a confidence which considered it a matter of course. With ten thousand slaves each, said the New Orleans *Delta*, Kansas, a new state in Texas, a state in New Mexico and one in Lower California might be gained; and from one thousand to two thousand would suffice to make sure completely of the fidelity of Delaware, Maryland, West Virginia and Missouri; "the foreign slave trade is the certain road to power for the south, and the only road to power within the Union." And from this decisive proposition in the reasoning of the radicals, the Richmond *Whig* now inferred for the conservatives that, in the re-opening of the African slave trade, an infallible means had been found not only to preserve the Union, but to permanently regain internal peace for it. This would deprive abolitionism of its sting immediately and forever, for the powerful

<sup>1</sup> De Bow, Commer. Rev., XXV, p. 502.

shipping interest would be welded with golden clamps to "the peculiar institution;" the Fugitive Slave Law would cause no more trouble, because the abolitionists would have all they could do to defend their own soil; but the negro was superior to the Irishman, and hence "we might forthwith take up the line of march, recapture Kansas, perhaps Indiana, Illinois and even Ohio, and colonize all the remaining territories of the confederacy;" the people will be again united among themselves, and hence we shall never again hear of a disruption of the Union.<sup>1</sup>

If, as the Richmond *Enquirer* had stated as early as at the beginning of 1856, "policy, humanity and Christianity alike forbid the extension of the evils of free society to new peoples and coming generations;"<sup>2</sup> and if, as G. Fitzhugh, of Virginia, had said the following year, the occidental civilized world would be ruined economically, intellectually and morally unless the southern states of the Union showed it the way to regeneration<sup>3</sup> by re-

<sup>1</sup> Copied in De Bow's Commer. Rev., XXV, p. 80.

<sup>2</sup> The Richmond *Enquirer*, Jan. 22, 1856.

<sup>3</sup> "Twenty years ago the south had no thought—no opinions of her own. Then she stood behind all Christendom; admitted her social structure, her habits, her economy and her industrial pursuits to be wrong, deplored them as a necessity, and begged pardon for their existence. Now she is about to lead the thought and direct the practices of Christendom: for Christendom sees and admits (!) that she has acted a silly and suicidal part in abolishing African slavery—the south a wise and prudent one in retaining it. . . . Southern practices alone (can) save Western Europe from universal famine: for cotton, sugar, rice, molasses and other slave products are intolerably dear and intolerably scarce, and France and England must have slaves to increase their production or starve. . . . In any view of the subject southern thought and southern example must rule the world.

"The south has acted wisely and prudently, acted according to the almost universal usage of civilized mankind, and the injunctions of the Bible, and she is about to gather her reward for so doing. She

opening the African slave trade and by the principle that the world is too little governed, and that not merely negro slavery is justified,—the day on which the prophecies of the *Richmond Whig* were fulfilled would be the happiest and most glorious the republic could see. As the existing laws could not be altered without the co-operation of the north, and as the north was closed against the importation of slaves, this grand future would have to remain a bright vision unless the slave states could open wide the door to the African blessing in spite of the existing laws. But the radicals not only claimed that this was possible, but had long ago told how it could be done. The immigration of African negroes, said the *Charleston Mercury*, is no more prohibited than immigration from Europe; and southerners might make contracts with these negroes beforehand concerning work and wages, as did the New England manufacturers with their European workmen. The federal courts would have no jurisdiction in respect to the enforcement of these contracts; it would depend entirely on the interested states whether the negroes should be really slaves.<sup>1</sup> Edw. A.

flourishes like the bay tree, whilst Europe starves; and she is as remarkable for her exemption of crime as her freedom from poverty. . . . We must defend the principle of slavery as part of the constitution of man's nature. The defense of mere negro slavery will, nay, has involved us in a thousand absurdities and contradictions. . . . The south leads opinion; she virtually proposes a renewal of the old slave trade. . . . The south also must originate a new political science, whose leading and distinctive principle will be, 'the world is too little governed.' . . . Slavery is necessary as an educational institution, and is worth ten times all the common schools of the north. Such common schools teach only uncommonly bad morals, and prepare their inmates to graduate in the penitentiary." *De Bow, Commer. Rev.*, XXIII, pp. 337, 338, 348, 449, 453, 454.

<sup>1</sup> What becomes of the negroes after they are imported into a state

Pollard, of Virginia, repeated this proposition in a book entitled *Black Diamonds*, and refuted the objection that that would be an evasion of the law with the remark that "it very often becomes necessary to evade the letter of the law in some of the greatest measures of social happiness and patriotism."<sup>1</sup>

These counsels did not fall on deaf ears. The house of representatives of the Louisiana legislature passed a bill in 1858 which authorized a company to import two thousand five hundred African negroes, who had to be indentured for at least fifteen years. The senate, indeed, rejected the bill, but only by a majority of two votes.<sup>2</sup> In Mississippi, on the other hand, if the newspapers were not incorrectly informed, people did not wait for the legislature to build a safe road around the gallows erected by the federal law. There some enterprising people had already made a successful beginning in importing slaves. In the house of representatives in Washington, Covode added, to the mention of this fact, the remark that the gentlemen would have nothing to fear from the president.<sup>3</sup> Even were this opinion not considered warranted, it had been only too certain for a long time that great zeal was not to be everywhere expected from the federal officials in the execution of the laws on this subject. That

will be an affair of the state. The general government can have nothing to do with it. The enforcement of any contract for wages will be entirely within the jurisdiction of the states. And if public opinion or the real understanding of the emigrants establishes practically that they shall be slaves, there is no redress by any other authority than that of the states in which they are located." Reprinted in the *New York Tribune*, June 29, 1857.

<sup>1</sup> See the entire citation in *Congr. Globe*, 1st Sess. 36th Congr., p. 225.

<sup>2</sup> See the *Independent* of March 11 and April 1, 1858.

<sup>3</sup> *Congr. Globe*, 1st Sess. 35th Congr., p. 1362.

the equipment of slave-ships in the harbors of the Union was increasing year after year was not a malicious invention of the republicans and abolitionists. English officials complained very bitterly of it, and the southern press was far from denying the fact.<sup>1</sup>

The people who had given the first impulse to the matter had themselves scarcely dared to hope that they would be able to point to such results after so short a time. But if, by their agitation, they had, as the *Richmond Whig* and others now said of them, intended to strengthen the position of the south in the Union, they dealt themselves a frightful blow with every success; for every proselyte whom they had won in the south was opposed by at least two in the north on whom they had forced the recognition of the irrepressibleness of the conflict. Only those reaped any real advantage from the triumphs of the propagandism for the re-opening of the

<sup>1</sup> J. J. Crawford, the English consul-general of Cuba, writes on the 11th of October, 1854: "Almost all the slave expeditions for some time past have been fitted out in the United States chiefly at New York, where there must be some establishment, ship or outfitting builders' or carpenters' ward specially undertaking such business for the slavers." Exec. Doc., 36th Congr., 2d Sess., vol. IV, No. 7, p. 115. See, also, *Ibid.*, pp. 67, 70, 103, 200, 201. The New York *Journal of Commerce*, which was far from having to fear the reproach of being an enemy of the south, writes at the end of 1856: "We learn, upon inquiry of the United States deputy-marshals, that the fitting out of slavers from this port continues. In fact, this business was never prosecuted with greater energy than at present. The occasional interposition of the legal authorities exercises no apparent influence for its suppression. It is seldom that one or more vessels cannot be designated at the wharves respecting which there is evidence that she either is or has been concerned in the traffic." Copied in the *Independent* of Dec. 4, 1856. De Bow's *Review* (XXII, pp. 430, 431) calculated in 1857 that about forty slavers were annually fitted out in the eastern harbors of the Union, and made a net profit of about seventeen millions.

slave trade who, with the *Disunionist*, would henceforth have a platform with only one plank — Secession!<sup>1</sup> Their day was now approaching with equal rapidity and certainty; for, although they were still only the minority, and a very small minority in several states, they had already found the right answer to the question how they could bend the majority to their will.

In a letter of June 15, 1858, to James S. Slaughter, Yancey proposed the formation of committees of safety in all the cotton states. With these "we shall fire the southern heart, instruct the southern mind, give courage to each other, and at the proper moment, by one organized, concerted action, we can precipitate the cotton states into a revolution." As late as May, 1860, Jefferson Davis endeavored, by the statement that this southern league planned by Yancey had been really formed only in Alabama, and even there numbered scarcely one hundred members, to make those people ridiculous who wished to attach great political significance to that letter.<sup>2</sup> A few weeks later he proved by his action that he was only shamming. The question was not whether a southern league had been formed, but only whether the radicals were resolved to act when a favorable opportunity offered. If they did this and were strong enough in only one cotton state, in Yancey's words, to precipitate it into a revolution, the disentangleable knot was cut.

<sup>1</sup> "We should never participate in the election of a president or congress; but build a platform of one plank, and let that be secession; and stand upon it, few or many, weak or strong, in life and in death" (p. 71).

<sup>2</sup> Congr. Globe, 1st Sess. 36th Congr., p. 2156.

## CHAPTER VII.

## THE SECOND SESSION OF THE THIRTY-FIFTH CONGRESS.

If the president's annual message of December 6, 1858, sent to the thirty-fifth congress at the beginning of its second session, judged the situation correctly, it was to be expected that questions of foreign policy would, in the near future, engross the attention of the republic. At least the ship of state had, according to his utterances, so far as home affairs were concerned — the financial question to a certain extent excepted — owing, in the first place, to his strong and wise policy, and, in the second, to the support which that policy had received from congress, an unusually calm sea before it. The description of the events in Utah already discussed was summarized in the sentence: "The authority of the constitution and the laws has been fully restored, and peace prevails throughout the territory." Just as satisfactory results were said to have been obtained by the legislative measures by which it was sought to deprive the Kansas question of its threatening character, inasmuch as the violent struggle over the slavery question was confined to its legitimate domain, the territory. The exhaustive demonstration of this assertion did not add a single new argument to the reasoning that had been heard so often. As new protests against the most recent acts of violence and outrage had been added to the old ones, made in the name of right and justice, he only sung the old tune in a still higher key: "In the course of my long public life, I have never performed any official act which, in the retrospect, has afforded me more heartfelt satisfaction." Thus, Buchanan now pretended to pass judgment on his course

in the Lecompton question, although he was obliged immediately thereafter to make the admission, which was far behind the documentarily proven fact, that he, "as an individual," was in favor of a vote of the people on the entire constitution. From the man who could write that, even the most decided opponent needed to ask no further argument in justification of what afterwards happened. Buchanan, therefore, spared himself the trouble of making such further argument; for the mere literal copying of the most important sentences of English's bill cannot well be considered such. His judgment on the bill was given without any assignment of reasons for it. The statesman-like authority of the "Sage of Wheatland" was the sole proof that it was "surely not unreasonable" to forbid the third attempt of Kansas to constitute itself a state until it had the population necessary for the election of a representative. To extend "this excellent provision" in future to all territories might, indeed, be commendable. Why "of course it would be unjust" to extend it to Oregon also was, however, a riddle hard to solve. In support of this claim all that was said was that, "acting upon the past practice of the government," it had already given itself a state constitution, and had elected a legislature and other officers. But every just claim growing out of the fact that the population of the territory, acting upon the previous practice of the government, had already tried to constitute themselves a state, might undoubtedly be made with at least the same right by Kansas as by Oregon. Politically, however, that was of no importance, if, as the president said, Kansas was now, because congress had guaranteed it complete freedom in respect to its own affairs, "tranquil and prosperous;" and after the sad experience it had had with resistance to territorial laws, it was not to be as-

sumed that it would try to give itself a constitution in opposition to the express provisions of a federal law. Then English's bill had not only put an end to the excitement in the states over the Kansas question, but it might and even must be assumed that the population of Kansas likewise had at last come to recognize how "insignificant" the question over which it had become so excited, "viewed in its political effects," was. Now, as the message — leaving out of consideration the economic condition of the country — touched on no internal question, except those of Utah, Kansas and Oregon, to which a political character could be attributed, those people, evidently, whose wishes were not suited to a time of political calm must have thanked the president for his endeavor to put the dead waters in motion by the request for extensive powers against certain American states, and for the appropriation of a sum for the purpose of negotiating for the purchase of Cuba.

The best criticism of the message was furnished by a speech of Iverson of January 9, 1859, although it did not even mention it. The speech of the senator from Georgia showed only how the country's situation was reflected in his own mind. If he so judged the situation, his estimate of it, considering the position he held among southern politicians, of itself showed Buchanan's description of it to be absurd. That a question not necessarily a political one — the construction of a railway to the Pacific ocean — gave Iverson occasion to describe the situation generally, served only to place the contrast between the president's assertions and the facts in a still more glaring light.

In all the northern states east of the Rocky Mountains, said Iverson, "in which elections have been held, our enemies have been victorious. Even Illinois is no exception,

for Douglas's doctrines oppose just as insurmountable a barrier to the extension of slavery as those of the republicans. The slave states must, therefore, either surrender their peculiar institutions or separate from the north, and the time could not be distant when they would form a confederation of their own. "Step by step, it [the republican party] will be driven onward in its mad career until slavery is abolished or the Union dissolved. One of these two things is as inevitable as death." The south, therefore, will not wait for an aggressive act: the election of a republican president in an electoral campaign carried on on a sectional basis will suffice. That a general convention of all the slave states would resolve upon secession is very improbable. But if only one slave state secedes, every slave state will be soon forced to follow it. The attempt to bring back by force into the Union a seceded state would be the greatest folly of which a weak and corrupt government ever became guilty. If the Union is once sundered, it can be restored again only by concessions from the north guarantying full security to the south.<sup>1</sup>

The value of the pacification which, according to the assurance given by Buchanan, had been brought about by the wise laws of the last session, had to be measured in accordance with this echo which his congratulations awakened among the radical slavocrats. Of course that echo was not unexpected by him, and hence he would certainly have now written the parts of his message in question word for word as he had written them a month ago. At the time he was, indeed, less inclined than usual to take such speeches very tragically, because of the successful erection of a new barrier against the eventuality

<sup>1</sup> Congr. Globe, 2d Sess. 35th Congr., pp. 242-244.

which, according to Iverson, would be followed by secession.

On the 14th of February, 1859, Buchanan signed the bill that admitted Oregon into the Union. Two days before, it had been passed by the house of representatives by a vote of one hundred and fourteen against one hundred and three. No party had voted as a unit. The republican minority of the committee on territories had, in their report,<sup>1</sup> furnished the figures proving that Kansas, so far as one was warranted to draw a conclusion from the number of votes cast at the elections, had a larger population than Oregon, and had therefore asked that the census provision of English's bill should be repealed. So long as what was recognized to be just for Oregon was not allowed to be right in the case of Kansas, they would oppose the admission of the former. All their party associates, of course, agreed with them that the two territories should not be measured with different measures; but a part of them considered it neither wise nor just that Oregon should be punished because others were unjust to Kansas. In addition to this another reason was advanced from Oregon itself and from a friendly source, to which considerable weight had to be attached, if the actual condition of affairs were really what it was alleged to be. Its constitution had taken such a position against free persons of color that its provisions must not only have aroused the indignation of every man who thought aright, but that their accordance with the federal constitution might be very seriously questioned. But a letter from Owen Wade<sup>2</sup> to a member of the house of representatives urgently argued that this should be overlooked if something incomparably worse were to be

<sup>1</sup> Congr. Globe, 2d Sess. 35th Congr., p. 946.

<sup>2</sup> Ibid., pp. 930, 931.

avoided. Nearly three thousand voters, he said, were very angry, because, on the 9th of November, 1857, a free state constitution had been adopted, and these now claimed that, in spite of that constitution, they might, by virtue of the Dred Scott decision, hold slaves; but if slavery was once introduced it would be very difficult to get rid of it again, and hence the admission of the territory as a state under the present constitution would be disagreeable not to the friends of freedom, but, in a high degree, to the slavocrats. Opposed to this consideration was the other that the democrats in Oregon had a great preponderance, and the Buchanan democrats besides. Its admission as a state, therefore, meant giving the democrats three sure votes for the next presidential election. But if the election, as the politicians of all parties considered very possible, devolved on the house of representatives, Oregon's vote would count as much as New York's; and the vote of one state for one party or the other might easily decide the issue.<sup>1</sup> It could not, therefore, be easy for any republican to vote for its admission; and the advantage Buchanan reaped from this was certainly not to be lightly estimated.

As so much might depend on this question, it could not be a matter of surprise if its settlement had been waited for before the negotiations on Buchanan's project of purchasing from Spain "the Pearl of the Antilles" began. Notwithstanding the glaring light which this discussion would cast on the danger involved in any strengthening of the Buchanan democracy, it was not done. Whether they believed themselves, under all circumstances, sure of a majority for Oregon, or whether the slavocracy looked upon their interests as no longer so intimately connected with those of the democratic party, out of con-

<sup>1</sup> See the article of the N. Y. *Times* of December 17, 1858.

sideration of it, to be patient a few weeks longer, must remain undecided here. It is not easy to see what it could fear to lose by such delay; for it hardly deceived itself on the point that in no case could it hope to be able to move both houses of congress to adopt its proposals at this session.

The message had not informed congress that new negotiations with Spain for the purchase of Cuba had been opened; but, that it might first give expression to its will, the whole question was laid before it, with the statement that it was absolutely necessary to success to give the president the means to make a payment on account to the Spanish government, immediately after the signing of the treaty and before its ratification by the senate. Although attention was called to the fact that the same power had been granted to Jefferson and Polk, it was unquestionable that, by reason of this statement, the project would fail in the present house of representatives. What was granted to Jefferson for the purchase of Louisiana, and to Polk for a settlement with Mexico after its defeat by arms, could be only a trifle compared with the sum of which there must be question here; and among the democrats themselves there were people enough who, even if they in general considered the purchase desirable, would never have confided such a sum to the discretion of James Buchanan.

The manner in which Buchanan took hold of the matter seemed to surprise even the senate. On the 18th of January, it requested the president, by a resolution, to send it the correspondence on the purchase, not yet made public, between the two governments. A message of the 21st of January<sup>1</sup> answered very briefly that no such correspondence existed, and that the president must re-

<sup>1</sup> Congr. Globe, 2d Sess. 35th Congr., p. 506.

peat the opinion expressed in his annual message that the previous consent of congress seemed to him "highly important if not indispensable to success."

In respect to this point, however, the annual message had not been misunderstood by the senate. Whether that body would busy itself more particularly with the suggestion made in the message, it did not by any means wish to make dependent on the answer it would receive to its request. As early as the 10th of January, Slidell had introduced a bill which placed at the disposal of the president \$30,000,000 for the purpose mentioned, and the senate had referred it to the committee on foreign affairs. On the 15th of January, a caucus of the democratic senators was held, in which the majority declared in favor of supporting the views of the president; but no formal resolution was passed as to how they should proceed in the matter.<sup>1</sup> Three days after the message was received the committee made its report through Slidell, recommending the adoption of the senator's bill with certain immaterial changes. Slidell, too, was the author of the lengthy argument by which the motion was introduced.<sup>2</sup>

The review of the history of the question, and the discussion of the reasons in favor of the acquisition of the island, brought nothing new. "The ultimate acquisition of Cuba may be considered a fixed purpose of the United States." If this proposition were made the starting-point of the argument, it was, in truth, almost a matter of indifference what was said as to the reasons why the purchase was to be made. Even if every word of Slidell was acquiesced in absolutely and by all, it still remained to be proved that it was advisable to try to execute this

<sup>1</sup> The N. Y. *Tribune*, Jan. 17, 1859.

<sup>2</sup> The report is printed in full in Congr. Globe, 2d Sess. 35th Congr., Append., pp. 90-95.

fixed purpose now and in the manner proposed by the bill. If this were made the test, both bill and report seemed, from every point of view, the greatest absurdities in the entire legislative history of the Union.

The picture which the annual message had drawn of the financial condition of the country was by no means a brilliant one, although the figures were presented in a manner which made it appear to the reader not trained in such matters much more favorable than it was in reality. Seward gave the sum total of the complicated account in two figures: the receipts had fallen off fifty millions, and the admitted deficit for the year amounted to thirty millions.<sup>1</sup> Under these circumstances thirty millions was so large a sum, even for a rich country like the United States, that the granting of it must meet with serious objection, although the object for which it was asked were in itself to be approved. But, in the matter proposed, there was question of an incomparably greater but wholly undetermined amount. The bill fixed no limit beyond which the offer of the president might not go. Slidell had, indeed, made an exhaustive calculation of returns based upon a purchase price of one hundred and twenty-five millions, stating that ten years ago one hundred millions had been offered, and that the increase in value in the meantime might be assumed to be twenty-five millions. This estimate was not only entirely arbitrary, but even if correct it did not possess the least importance, as it was not binding on the president. If Spain could only be induced to sell Cuba for twice or thrice this amount, and if Buchanan thought that, considering the resulting political advantages, that sum was not too much to pay for the island, there was nothing to prevent his giving it in his treaty. There was

<sup>1</sup> Congr. Globe, 2d Sess. 35th Congr., p. 538.

a great difference between the opinion that Cuba should be acquired if it could be had for a suitable price, and that it must be purchased at any price which James Buchanan would not consider too high. Yet this is what the bill practically amounted to, for the senate would have had no choice but to approve the treaty or allow the country to bear the loss of the thirty millions the president would have already paid on account. But if it was, on the one hand, self-evident that congress would never consent to the alternative of abstaining from co-operating in the determination of the purchase price, or running the risk that the president would throw away thirty millions, it was, on the other, for obvious reasons, not advisable to fix a definite sum beyond which the president should not go, as Taylor, of Louisiana, moved in the house of representatives.<sup>1</sup> This shut out all real negotiations on this point from the start. If a sufficiently large amount was not bid, a curt answer in the negative would have been received; and if the result showed that enough had been offered, perhaps too high a bid would have been uselessly made; for it was clear that Spain would not be satisfied with less than congress had already declared itself ready to pay.

The danger that the island would have to be paid for at a price far beyond its value, unless Spain was made a present of thirty million dollars, was by no means the only one to which the country would have been exposed by the passage of the bill. That the contract would not only fix the price, but would contain other stipulations, was a matter of course; and, with respect to the latter, congress would have exempted the president from the constitutional control of the senate, inasmuch as it would

<sup>1</sup> He proposed \$120,000,000. Congr. Globe, 2d Sess. 35th Congr., p. 747.

be obliged to approve them also, if the thirty millions were not to be lost. Notwithstanding the precedents adduced by Buchanan, more than one strong argument could be made to show that this was an unwarranted stretching of the power which the president should, according to the intentions of the framers of the constitution, have in the conclusion of treaties. But, however this might be, congress was certainly not bound to, in this way and to this extent, leave it entirely to the judgment of the president to say what the interests of the Union demanded and allowed. If it did so, notwithstanding, without imperative reasons, it assumed a frightful responsibility to the country. Even under ordinary circumstances such a request should not have been made unless great unanimity prevailed among the people in respect to the question under discussion, and unless the president enjoyed their confidence to an extraordinary degree. To properly characterize the fact that such powers were now asked for James Buchanan in this question is not easy. "We," said Seward, "who have disputed so earnestly, often so vehemently, year after year, year in and year out, over the question whether the institution of slavery shall be introduced into the territory of Kansas, are expected by the president, in his simplicity, to allow him to determine for the north and for the south, for the free states and for the slave states, at his own absolute pleasure, the terms and conditions upon which Cuba shall be annexed to the United States and incorporated into the Union. I say nothing of the present incumbent of the executive office. I say that men never chose, nor did God ever send on earth, a magistrate to whom I would confide this great question, having a constitutional right to decide it myself."

If the bill were to be seriously interpreted to mean

what it pretended, there were, indeed, only two possibilities: either its advocates and the president were themselves possessed, or they thought they might assume the republicans and the free-soil democrats possessed, of an excess of simplicity. Even those northern democrats who, with Douglas, looked upon slavery with absolute indifference could not vote for the bill without giving proof such as this of their poverty of thought in political matters, unless they looked upon speeches like Iverson's as the ravings of madmen. If only the very least possibility had to be conceded that the Union would be disrupted by the slavery question, the purchase, so far as the north was concerned, was an act of unparalleled folly; and not only an act of unparalleled folly, but of frenzy, if the secession of the slave states, as Iverson had asserted, were unavoidable and must take place in the near future. Cuba must then naturally fall to the share of the southern confederacy, and the federal government would have thrust its hand thus deeply into the pockets of the tax-payers of the free states in order to put a premium of perhaps one hundred millions and even more on the secession of the south. As early as April 19, 1858, Francis Lieber, who had lived so long in the heart of the slave territory, had written to G. S. Hilliard that the moment the north had paid for Cuba the south would declare itself independent.<sup>1</sup>

Buchanan's superior political wisdom, however, had enabled him to discover reasons which must make the acquisition of the island seem to even the fanatical opponents of slavery a great achievement for their cause. So long as the African slave trade continues, said the annual message, civilization cannot penetrate into benighted Africa; but that trade will come to an end as soon as

<sup>1</sup> Perry, *The Life and Letters of Francis Lieber*, p. 300.

Cuba, by being transferred to the possession of the United States, ceases to be a market for wicked man-hunters. Slidell developed this idea still further in his report; and if he did not, at the same time, call attention to Buchanan's moral indignation at the accursed trade, he made up for his neglect by laying all the more stress on the financial aspect of the question: the saving that would be effected by the fact that it would no longer be necessary to maintain a squadron on the African coast, was a very material factor in his calculation of the remunerativeness of the investment. But as the importation of such slaves was already prohibited by law, the question might properly be asked by what right both president and senator believed themselves exempt from the necessity of assigning any ground whatever for the assertion that by the mere change of owner a complete revolution in this respect in the actual condition of affairs would immediately take place. In his annual message of the 3d of December, 1860, Buchanan recalled the fact that "a restoration of the African slave trade had numerous and powerful advocates in the United States." If he had forgotten this when he was writing his message of the 6th of December, 1858, it must have been vividly enough recalled to his memory by many a word spoken in the debates of congress during this session. On the 26th of January Keitt, in the house of representatives, declared himself opposed to the agitation of the question, because it was a cause of excitement, and yet could "now result in no practical action." But the day would come when it would conquer a place in the politics of the south, and independently of parties fix itself in the consciousness of the public with hooks of steel. Yet as the free states prevented the federal government from intervening in favor of slavery, it must also be deprived of the possibility of intervening

against it; that is, the law which declared the African slave trade to be piracy must be repealed and the squadron on the coast of Africa recalled.<sup>1</sup> Seward, of Georgia, followed Keitt with the formal motion that all laws which forbade the slave trade should be repealed, and the separate states allowed to act on the matter as they thought fit.<sup>2</sup> And on the 21st of February, before the decision on the thirty-million bill in the senate was reached, Slidell himself confessed that propagandism for the restoration of the slave trade would make great progress, if the south continued to be obliged to compete with the cheaper slave labor of other states, which were continually receiving new importations from Africa.<sup>3</sup> The best commentary, however, on the president's statement and Slidell's report was furnished by an actual occurrence in Georgia, the discussion of which was now in every mouth. In December, 1858, the yacht *Wanderer* had landed some hundred African negroes in the vicinity of Brunswick. The ship was confiscated and sold. But public opinion revolted so little against the trade that people willingly acceded to the bold demand of the owner not to outbid him, and the ship was sold to him at about one-quarter of its real value. Judge Wayne endeavored fruitlessly to get a jury together who would do their duty; and while the guilty man found protection against the law in public opinion, nothing could be ascertained as to the whereabouts of the negroes.<sup>4</sup> When the case was finally decided judicially in 1860, morality and the supremacy of the law received only a new slap in the face. District Judge A. G. Magrath enriched the annals of forensic sophistry with the

<sup>1</sup> Congr. Globe, 2d Sess. 35th Congr., Append., p. 4.

<sup>2</sup> Loc. cit.

<sup>3</sup> Ibid., p. 1184.

<sup>4</sup> Ibid., p. 1336.

proof that the slave trade had not been declared piracy by the law of May 15, 1820.<sup>1</sup>

Even if people in the southern states without exception were still of the same way of thinking on the African slave trade as they had been forty years before, the assertion made by Buchanan and Slidell would have been entirely baseless. Collamer called attention to the fact that slaves in the United States cost about twice as much as in Cuba, and that this difference of price must immediately disappear after annexation, as slaves then could be brought unhindered from the island to the continent at a nominal cost to be sold. From these facts he drew the correct conclusion that if the prospect of a so much smaller profit had been a sufficient inducement to the slaveholders, spite of all the penalties imposed by the law, to smuggle ten thousand <sup>2</sup> African negroes into the country, such an enormous increase of the profit would give the business the necessary impetus. This was all the more certainly to be expected, as the annexation would probably cause England to withdraw its African squadron. But as it was universally conceded that the united efforts of England and the United States for the suppression of the African slave trade had hitherto been attended by very unsatisfactory results, it was impossible to foresee what sums the United States would then have to spend if it were only to keep that trade within its present limits.<sup>3</sup>

That all these reasons made it impossible for any republican to vote for Slidell's bill is self-evident. Some of them, however, must have seemed so weighty to the Douglas democrats that a part of them likewise would

<sup>1</sup> Some further details may be found in Lieber, *Misc. Writings*, II, pp. 175, 176.

<sup>2</sup> Benjamin corrected him — twenty-five thousand.

<sup>3</sup> *Congr. Globe*, 2d Sess. 35th Congr., pp. 1182, 1183.

join the opposition, although their leader had for a long time advocated the acquisition of the island in a manner such that it was now to be expected he would be seen marching under Buchanan's flag. Even in the slave states themselves, there was no lack of people who not only took umbrage at the fact that the president was to be given practically unlimited power in a question of this importance, but who had serious objections to the annexation project itself, or at least to its prosecution at this time; and if these dissenting voices had not a weight worthy of consideration, Slidell would certainly not have referred to them in his report. He could not, of course, pass over in silence the assertion that "perils" to the United States were to be apprehended from "the different elements composing the population and the supposed mixture of races;" and to be forced to admit that these fears were entertained by "some southern statesmen" also must have been very disagreeable to him. The opposition in the south, however, was not confined to a few statesmen; nor was this the only objection they raised. Groups of certain interests, as, for instance, the sugar planters, would have to be actuated by the most wonderful unselfishness, if they had given no consideration whatever to the menacing competition they would have to meet in consequence of the annexation of Cuba. But, above all, thinking conservatives could not ignore the heavy responsibility they assumed, if now, without the weightiest reason, another apple of discord were thrown between the north and the south, while they felt themselves forced daily more and more to face the momentous question how much longer the bonds of the Union would be able to bear the frightful weight of the slavery question without breaking. And was it not the utmost wickedness to stir up this new quarrel, when the preliminary question

whether Spain would agree to the sale, under any circumstances, could not be answered in the affirmative with any degree of confidence? Even if there were absolute unanimity in congress and among the entire people, both on the question of purchase itself and on the mode of procedure provided for in the bill, the legislative branch of the Union would have been guilty at least of an entirely purposeless waste of time, if an absolute negative was to be expected.

At least, we say; for, considering the previous history of the question, one could not but perceive that Spain's answer would be a categorical No! and that it would look upon the proposal as insulting bare-facedness. Slidell's report could adduce nothing to weaken this argument, except that revolutions had become a chronic disease in Spain: new men might be placed at the helm of the ship of state there any day, and the American ambassadors would not make any proposition until they had reason to believe that it would be favorably accepted. He admitted, however, that if it were true that a proposition would "offend the Spanish pride, be regarded as an insult and rejected with contempt," that "would be a conclusive argument against the bill." But accident would have it that on the very morning on which Slidell, in the name of the committee, laid his bill before the senate again, newspapers reached Washington which contained exhaustive reports of the reception given in Spain to the part of Buchanan's message with which we are concerned. To a question of Ulloa's, O'Donnell had answered that Spain "was disposed to demand due satisfaction for such an insult." The exposition in detail of the reasons for this declaration had been interrupted by loud and frequent applause; and a resolution moved by Allozaga, which expressed gratification at the answer

and added that the Cortes would always co-operate with the government in the defence of the integrity of the territory subject to Spain, was unanimously adopted.<sup>1</sup> If Seward believed that, by reading this report, he would disconcert Slidell, he did not know the man. He now declared to be of no importance what he had five minutes before alleged to be a conclusive argument against the bill, since the message had already produced the effect that Seward feared from the bill; and the latter, therefore, could do no further harm.

All criticism of such logic was superfluous; for this answer to Buchanan's suggestion of the purchase of Cuba settled the whole question. No matter what powers were given to the president, all negotiations about a purchase were entirely meaningless unless it were desired to excite Spain still more, as Kennedy, of Maryland, said, to force a solution of the question in harmony with the wishes of the president and the slavocracy, by lead and steel instead of gold.<sup>2</sup>

The suspicion that this was kept in view as an eventuality could not be dismissed without any more ado as an absurd slander. The assurance of the message that the United States would continue to make territorial acquisitions by honorable purchase, as it had done hitherto, was accompanied by a reminder of the supreme law of states, the duty of self-preservation; and in the mouth of one of the authors of the Ostend manifesto this was no meaningless commonplace. Nor was the idea itself by any means new. It had for a long time a great many advocates even in the free states. Thus it was definitely

<sup>1</sup> See the wording of the newspaper report read by Seward. *Ibid.*, p. 540.

<sup>2</sup> "If gentlemen have been in earnest on this question, they mean violence or they mean nothing." *Ibid.*, p. 1347.

stated that, in Douglas's opinion, the United States should wait until the Cuban authorities had become guilty of some new gross impropriety, like that of the Black Warrior affair, to create accomplished facts which would overcome Spain's unwillingness to enter into negotiations.<sup>1</sup> And if he did not now, in the debate on the thirty-million bill, confess that he was unreservedly of this opinion, more than one of the spokesmen of the slavocracy did. They did not even think it necessary to wait for Spain to furnish a pretext for the employment of force. Mallory's advice was that if Spain continued stubborn it should be given "openly and frankly to understand that the United States would do as Frederick the Great had done with Silesia — that is, first take Cuba and then talk about it."<sup>2</sup> And Brown blurted out that the bill should announce to all the world that the United States was resolved to acquire Cuba — "peaceably if we can, forcibly if we must."<sup>3</sup>

If the bill was to announce this, much more could be discovered in it with the assistance of the message and Slidell's report.

Of what immense importance Cuba is to us, Slidell had said, no more needs a proof than the simplest mathematical proposition. "The purchase and annexation of Louisiana led, as a necessary corollary, to that of Florida; and both point with unerring certainty to the acquisition of Cuba." This simple argument might be continued at any

<sup>1</sup> See the *N. Y. Tribune*, Jan. 17, 1859.

<sup>2</sup> *Congr. Globe*, 2d Sess. 35th Congr., p. 1332.

<sup>3</sup> "I am for the acquisition of Cuba, and I want to advertise to all the world that we mean to have it — peaceably if we can, forcibly if we must. I am willing to pay for it, or I am willing to fight for it. I would advertise to the world that we mean to have it; and I look upon this bill as nothing more than a mere advertisement that the United States desire Cuba, and mean to have it." *Ibid.*, p. 1363.

moment, and carried to the point to which the cupidity of the United States desired to go. And that its cupidity would not stop at Cuba, if the wishes of the radical wing of the slavocracy were to control the policy of the Union, had been already frequently stated with the greatest frankness. But now, one did not need to call to mind the old truth that appetite comes with eating. No extraordinary amount of suspicion was needed to be led by the message to inquire whether preparatory steps were not already taking for a further advance in the near future. On the very first day of the debate, Seward had said: We have not to do with an isolated proposition, but the executive has proposed a whole series of measures of the same kind; the president wants to be authorized to send the armed force of the United States to Mexico to establish a protectorate over a part of that republic, and "to make war in his own discretion and at his own pleasure against all or nearly all the Spanish-American states on this continent." Even if Buchanan's character and political past had excluded all suspicion that he intended to favor territorial acquisition, the fear would have been not entirely unfounded that the facts created by himself, through the instrumentality of these extraordinary and entirely unrepugnant powers, might be made use of by the slavocracy as a foundation for the realization of their desires for annexation. That, under their influential leaders, there would be no lack of men who would try to do this, was certain. When Collamer, on the 21st of February, repeated the objections of Seward, above mentioned, and at the same time called attention to the fact that Toombs had once expressed the wish to see the annexation of tropical America declared the policy of the United States, the latter replied: "It is true — the whole of it."

Even if those who thought that they could dismiss all such ideas with a shrug of the shoulders as ridiculous chimeras were in the right, the republicans could not be reproached with endeavoring to prejudice public opinion against the bill by awaking exaggerated notions of the evil consequences which must be expected from it. The contrary objection that they underestimated its importance might seem to be much better founded; for even if they pointed to the ultimate aims of a part of the slavocracy, they at the same time declared over and over again that they could not believe the project was seriously intended. From the undoubted certainty that Spain would reject every proposition, they drew the conclusion that they had to do with a political manœuvre the motives and objects of which were to be looked for in the domestic affairs of the Union. Buchanan, said Seward, "expects, by appealing to the cupidity of the American people, that he will escape an investigation upon the domestic policy of the administration, which has been a total failure."<sup>1</sup> There was question of acquiring not Cuba, but this country, in the next presidential election, said Hale; and he added that the question menaced to demoralize the republican party if it were not met in the right way.<sup>2</sup> Doolittle agreed to both opinions, as he called the bill an effort "to change the pleadings" for the electoral campaign of 1860.<sup>3</sup> And Hale was not the only one who did justice to the tactic skill of his opponents. Once they have awakened the greediness of the masses for more land, said the New York *Tribune* of January 17, "their battle for 1860 is half won."

A few days later the *Tribune* was indeed written to

<sup>1</sup> Ibid., p. 1355.

<sup>2</sup> Ibid., p. 905.

<sup>3</sup> Ibid., p. 906.

from Washington that to Buchanan and his cabinet the bill was certainly not merely a means to reach other ends, and that the president might really hope for success if only a sufficient sum were placed at his disposal.<sup>1</sup> Even if this view were the correct one — and it is not impossible that it was — it was indisputable that the project had its origin to a great extent and probably chiefly in considerations as to its assumed effects on the presidential election of 1860. The Washington correspondent of the Charleston *Mercury* asserted this with as much positiveness as the republicans;<sup>2</sup> and his testimony in the case of this question could not be found fault with. And scarcely less heavily than the direct admissions of this kind, weighed the indirect confirmation this view received by the apparently contradictory course pursued by the majority of the senate, under Slidell's leadership, in respect to the parliamentary management of the bill.

On the 9th of February the senate had, by a vote of twenty-eight against seventeen, resolved that the bill should be brought up for discussion, notwithstanding the fact that the most important questions, like the appropriations and the financial question generally, in consequence, ran the risk of remaining undecided. Hunter, who had charge of the appropriation bills, was always

<sup>1</sup> The N. Y. *Tribune*, Jan. 25, 1859.

<sup>2</sup> "It is evident Mr. Buchanan has purposely reserved this question for political capital, and intends to make it the lever by which to raise the democratic party out of 'the slough of despond' into which the abolitionists had thrust it. It is a subject peculiarly attractive to the people of the north, who, while they are fondly devoted to free negroes, are still more ardent in their love of 'free sugar,' and will go for Cuba without slavery. If anything in the future may be predicted from the present complexion of affairs, 'Cuba' is to be the democratic war-cry in the presidential campaign of 1860, and is the only thing which is likely to give us a democratic president." Congr. Globe, 2d Sess. 35th Congr., Append., p. 163.

ready to defer the latter in favor of the thirty-million bill; but whenever a request was made that any other important bill — as, for instance, the homestead bill — should be taken up, he immediately objected that such a thing could not be permitted on account of the appropriation bills. The session of the 25th of February lasted into the following day. The majority wished again to force the opposition to make their speeches to a sleeping audience or to promise that they would allow the vote to be taken on the following day at a definite hour. The minority remained firm; and Slidell himself at last moved an adjournment, after the motion to lay the bill on the table had been rejected by a vote of thirty against eighteen, which he called a “test vote.” A large majority had, therefore, been secured for the bill; and, in the course of the debate, Slidell announced again with emphasis that a vote would be taken at any risk. He, therefore, had no reason to complain when the explanation he had given a few hours later (February 26) was doubted, viz.: that it was consideration for the appropriation bills which had determined him and the other friends of the bill to defer the decision of the question until next session, and for the present to rest satisfied with the fact that the majority in this “test vote” had expressed themselves in favor of “the principle of the bill.”

Even the democratic press inferred from this contradictory course that the passage of the bill had never been desired by Buchanan, because the purchase project could fulfill its real purpose of holding the party together in the presidential campaign only so long as it remained a means of agitation.<sup>1</sup> But if it could be considered cer-

<sup>1</sup> The Rochester *Union and Advertiser*, one of the oldest and most respected democratic journals of western New York, lets its amplification of this proposition culminate in the charge that Buchanan's

tain that, even with thirty millions at his disposal, the president would not be able to induce Spain to sell the island, it was now incomparably more certain that the speculation on this unifying power of the project was entirely wrong, and that it therefore had served only to intensify the strain by increasing still further the dangerous excitement of men's minds. On the 23d of February a debate had taken place in the senate which cast such a glaring light on the yawning gap between the two wings of the democratic party that it was more than folly to cling to the hope that by energetically catering to the appetite for more territory it could be closed again at last during the next presidential campaign.

The repeal moved by Hale of the provision of English's bill, according to which Kansas could adopt a state constitution only after it had been shown by the taking of a census that it had the population required for the election of a representative, was under discussion. Brown's speech, which, to use Broderick's expression, cast a bombshell into the senate, was, however, not provoked by that motion. Its connection with that motion was so remote that it might, with equal truth, have been connected with a hundred other questions. Its declared object was to make it perfectly clear what was the position respectively of the two wings of the democratic party on the question of slavery in the territories. Its text, pregnant with meaning, was: "I neither want to cheat nor be cheated in the great contest that is to come off in 1860.<sup>1</sup>" As a presidential candidate, Douglas should give an explanation of the doctrine he had announced in Freeport; and certainty should be obtained as to whether the democrats

ultimate object was his re-election. This interesting article is copied in the *N. Y. Tribune* of March 12, 1859.

<sup>1</sup> Congr. Globe, 2d Sess. 35th Congr., p. 1242.

of the northern states took the same ground. Those who had hitherto deceived themselves on the matter had now to recognize that the re-election of Douglas to the senate was not the end of the play of the Lincoln-Douglas campaign, but only of its first act.

If the Dred Scott decision has any sense at all, said Brown, it means that it is the duty of the government to protect our slave property in the territories. If the word protection is not to be a deception and a fraud, it must mean an "adequate" and "sufficient" protection. The constitution has not given us rights, and refused us the means to protect and defend them. If the territorial legislature refuses me protection to my slave property, I shall demand that protection of congress; and congress must grant it to me, for the territorial legislature is its creature. Will you grant that demand? Will you annul the laws of the territorial legislature that violate that right of protection, and pass laws that will grant it? The declaration that you do not, with Douglas, consider the territorial legislature authorized, by non-action or by unfriendly action, to exclude me and my slaves from the territory is worth nothing. It is a matter of indifference how you think; we shall demand that you act. If you refuse to answer the question, Will you do this? in the affirmative, there is to me no difference between you and Douglas. But if we cannot get the rights which belong to us under the constitution according to the supreme court of the country, we shall remain in it no longer — for it is a despotism. There must, therefore, be a clear understanding between us and the democrats of the northern states. If we do not agree, let us, like honest men, separate.

Douglas accepted the challenge with the declaration that he too did not want to cheat or to be cheated, and that he would, therefore, define his position so clearly that no doubt concerning it would be possible. In

doing so he said nothing new. As Brown had only clothed Lincoln's reasoning in different words, Douglas simply repeated the sophisms with which he had endeavored to meet the latter. The legal nature of slave property and other property, he said, is exactly the same; and hence the territorial legislature has precisely the same power over the one as over the other. If the real nature of slave property is such as to require greater protection than other property, that is the misfortune of the slave-holders. What the territorial legislature should do in consequence of this is a matter of indifference. If the population do not want slavery, the legislature will neglect to take the measures which, considering the real value of slave property, are the absolute preconditions of the possibility of the continuance of slavery; but it cannot be forced to do what it does not want to do. And it is very doubtful whether, in all the free states, a single man can be found who is ready to agree to the demand through congress to force upon the population, against their will, such a "slave code" as is indispensable to the continuance of slavery. The Kansas-Nebraska bill has settled that help against the unconstitutional action of a territorial legislature is to be sought for, not from congress, but from the courts; and Brown himself expressly approved this in his speech of July 2, 1856.<sup>1</sup> But it is right that we must come to a clear understanding as to whether we shall agree. "We live under a common constitution. No political creed is sound or safe which cannot be proclaimed in the same sense wherever the American flag waves over American soil. If the north and the south cannot come to a common ground on the slavery question, the sooner we know it the better. . . . If you repudiate the doctrine of non-intervention and form a slave code by act of congress, when the people of

<sup>1</sup> Compare Congr. Globe, 1st Sess. 34th Congr., Append., p. 801.

the territory refuse it, you must step off the democratic platform. We will let you depart in peace, as you no longer belong to us. . . . I do not believe a democratic candidate can even carry any one democratic state of the north on the platform that it is the duty of the federal government to force the people of a territory to have slavery when they do not want it."<sup>1</sup>

Brown absolutely denied that he had changed his views. The provision of the Kansas-Nebraska bill quoted by Douglas did not provide for the case of slave-holders deprived of their rights by the failure of the territorial legislature to act; for such a case could not be brought before the federal supreme court.<sup>2</sup>

Undeniable as this was, it was not at all pertinent to the political question. If Douglas could not convince Brown, nor Brown Douglas, or if neither could induce the other actually to surrender his point of view, it was, so far as the practical consequences of the controversy were concerned, entirely indifferent who was right or wrong on the constitutional question. But Douglas and Brown did not speak in their own names alone. On the one side Pugh, with great emphasis, supported Douglas's assertion that no free state would ever agree to Brown's "monstrous demand;" and, on the other, Mason and Jefferson Davis adhered just as strongly to Brown's declaration that the slave states would never accept a presidential candidate who took Douglas's point of view. Was it now conceivable that the electoral battle of 1860 would after all be fought under a leader of the slavocracy and of the democrats of the northern states?

Green declared it not only possible but even had the boldness to promise to bring about the reunion of the struggling parties on the main question by his speech,

<sup>1</sup> Congr. Globe, 2d Sess. 35th Congr., pp. 1246, 1247.

<sup>2</sup> Ibid., p. 1251.

although on the legal question he stood precisely where Brown did. As at the time there was no practical question before them, he thought no proper ground could be found on either side for a separation in this difference of opinion. But an accident now swept the ground from under his feet as one had swept it from under Slidell's in the discussion of the Cuban question. During the debate the news came that the Kansas legislature had passed a law which declared slavery abolished. Douglas's reply was, therefore, irrefutable: "Now is the time and here the cause if you ever intend to intervene."<sup>1</sup>

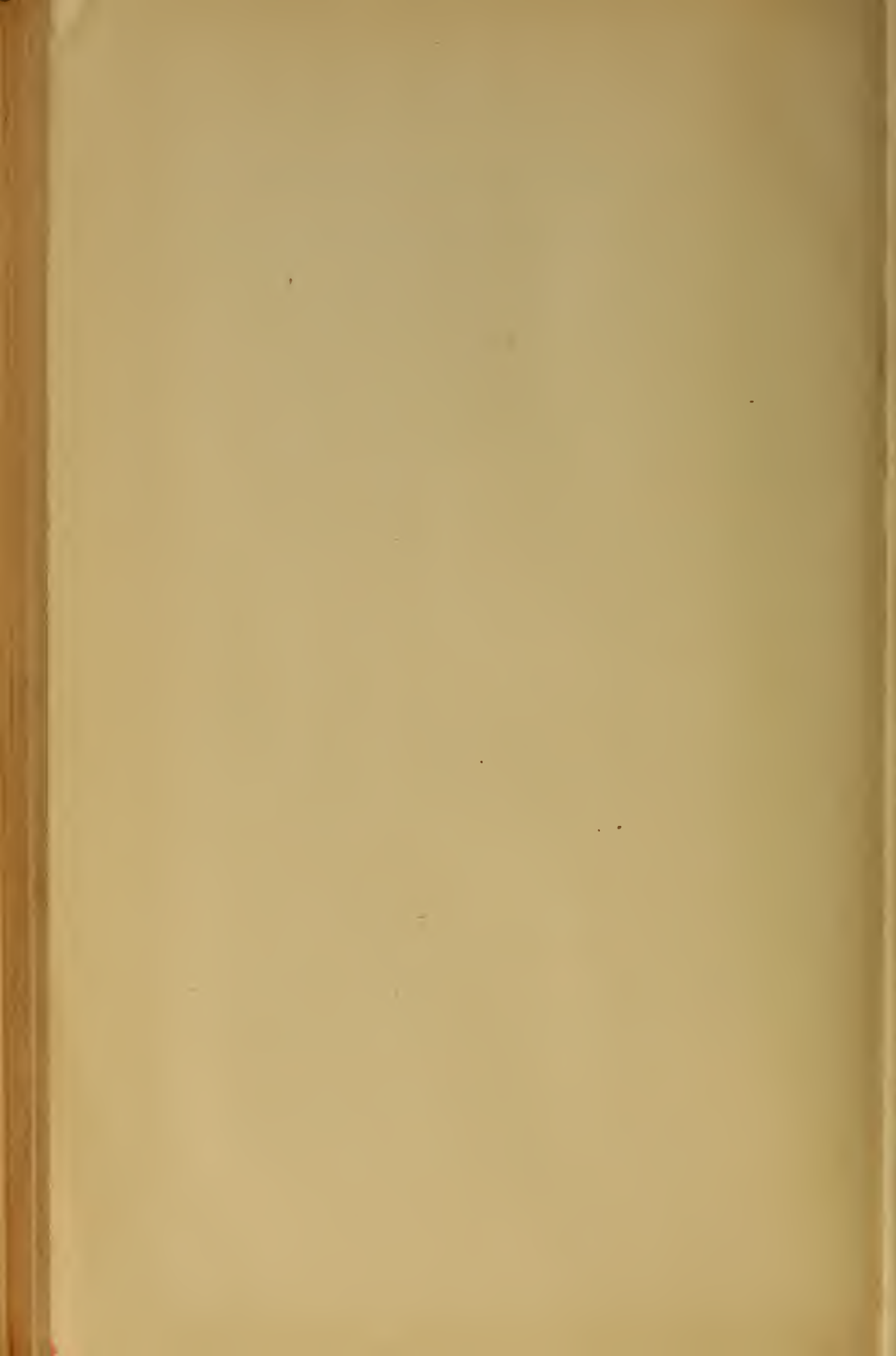
If the question could ever become a practical one, it had, indeed, become one by this step taken by the legislature of Kansas. Its settlement might, notwithstanding, be deferred. But it had become impossible to hold the party together, for the presidential campaign of 1860, under the pretense that an irreconcilable difference of opinion prevailed only on a theoretical question which probably would never assume the character of a practical problem. Even Bigler, of Pennsylvania, who with Gwin, of California, opposed Douglas's doctrine, therefore, acknowledged that the discussion provoked by Brown could evidently "lead to no other result than disaster to the democratic party."<sup>2</sup> The *thema probandum* of the bitter, leading article of the *Washington States*, of January 26, 1859, had been made an undoubted and irrevocable fact by the debate of February 23, viz.: "There is no such entity as a democratic party." The 35th Congress ended while the funeral bells of the democratic party were tolling; and hence the history of the 36th Congress could not but become the knell of the Union.

<sup>1</sup> Congr. Globe, 2d Sess. 35th Congr., p. 1255.

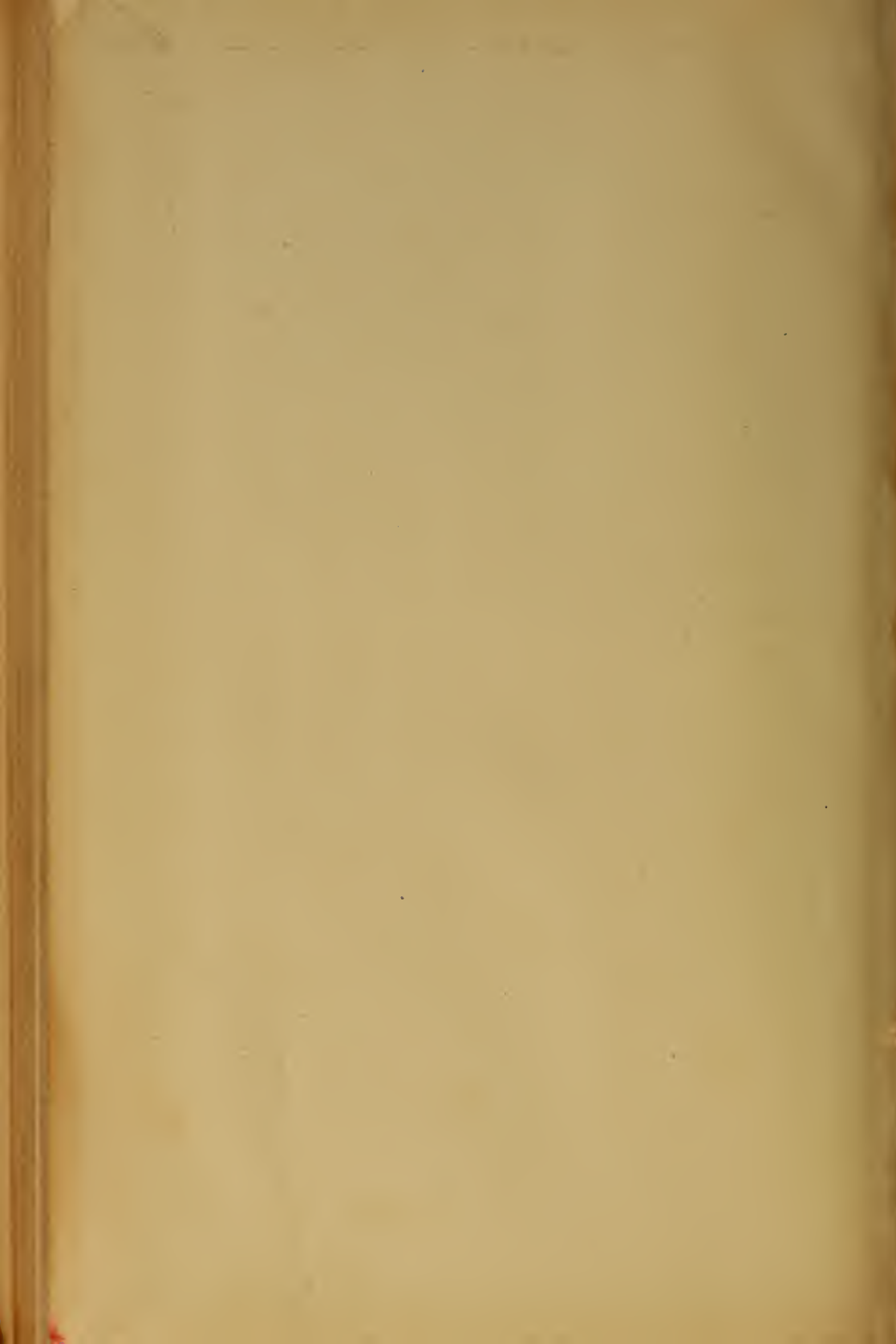
<sup>2</sup> Ibid., p. 1623.

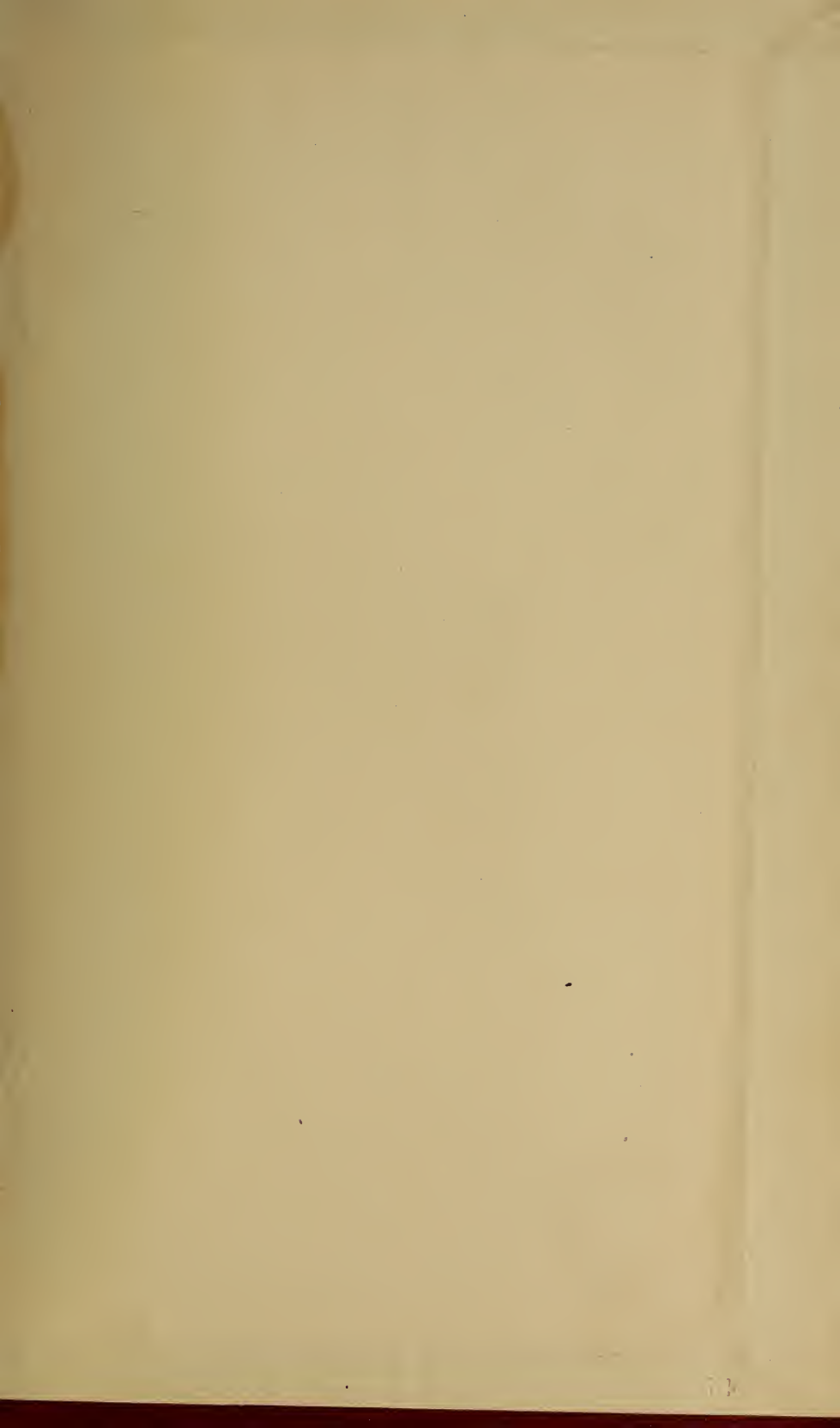
<sup>3</sup> The organ of the radical slavocracy at the national capitol.



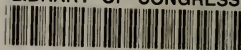








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